client alert | explanatory memorandum

December 2016/January 2017

CURRENCY:
This issue of **Client Alert** takes into account developments up to and including 21 November 2016.

Contrived trust arrangements in ATO sights

On 17 November 2016 the ATO released Taxpayer Alert TA 2016/12, which deals with trust income reduction arrangements that are under review. The ATO says the arrangements appear designed to exploit the proportionate approach to trust taxation. The arrangements are deliberately structured to exclude from the trust income much of the economic benefit reflected in the taxable net income of the trust. In doing this, the taxpayers seek to gain substantial tax benefits.

The underlying premise of the arrangements described in the Taxpayer Alert is that the taxable net income of the trust is assessed to the presently entitled beneficiary, while the economic benefits reflected in that net income are retained by the trustee, or passed to a different beneficiary in a purportedly tax-free form. Under these arrangements, the rate of tax paid by the presently entitled beneficiary is lower (often significantly lower) than the rate of tax that would otherwise have been paid by the trustee and/or the beneficiary who receives the benefit.

The ATO says the arrangements in question typically display all or most of the following features:

- Steps are taken to create an artificial difference between the trust income and taxable net income of a closely held trust with the primary motivation appearing to be the avoidance of tax. The steps may include:
  - amending or varying the trust deed definition of income or the trustee's powers to determine trust income;
  - the trustee taking steps for the principal purpose of reducing trust income; and/or
  - the trustee relying on a power in the trust deed to determine that trust income is less than it would otherwise have been.
- The beneficiary who is made presently entitled to the trust income:
  - pays little or no tax on the share of taxable net income included in its assessable income; or
  - is a private company, with the arrangement designed to impose tax on the net income of the trust at the rate of 30%, while limiting any increase in the accumulated profits of the company so as to minimise future assessable income that arises from paying dividends out of company profits.
- The trust retaining the economic benefit reflects the artificial difference between the trust income and taxable net income of the trust. That benefit may subsequently be extracted in a form that is claimed to be tax-free (or subject to a reduced rate of tax) in the hands of the recipient (usually an individual related to the controlling mind).

The Taxpayer Alert gives four examples of the arrangements. The ATO is currently reviewing these arrangements. It has commenced compliance activities affecting a number of entities and is identifying tax advisors who are promoting these schemes, with plans to "follow up appropriately". The ATO is developing its technical position on the arrangements and says it will canvass it in more detail in due course.

The ATO encourages those who may have entered, or may be planning to enter, into an arrangement of the types described to:

- phone the ATO on 1800 177 006;
- email the ATO at TrustRisk@ato.gov.au;
- ask the ATO for a private ruling;
- seek independent professional advice; and/or
- make a voluntary disclosure to reduce potential penalties.

The ATO identified the problematic arrangements through the Trusts Taskforce's ongoing monitoring and reviews, and says it continues to look for such arrangements using sophisticated analytics.

Ten of the cases the ATO is examining show lost revenue of more than $40 million and go far beyond legitimate tax planning, raising a number of red flags, Deputy Commissioner Michael Cranston said. "We are looking closely to see if arrangements comply with trust law, constitute a sham or are captured by anti-avoidance provisions or integrity rules", he said.

Source: ATO, Taxpayer Alert TA 2016/2, 17 November 2016, https://www.ato.gov.au/law/view/view.htm?docid=%22TPA%2FTA201612%2FNAT%2FATO%2F00001%22; ATO media release, "ATO issues warning on contrived trust arrangements", 17 November 2016, https://www.ato.gov.au/Media-centre/Media-releases/ATO-issues-warning-on-contrived-trust-arrangements/.

GST and countertrade transactions

On 18 November 2016 the ATO issued *Practical Compliance Guideline PCG 2016/18*, which outlines the treatment of "countertrade" transactions – that is, the direct exchange of things by one entity for things provided by another entity – in the context of GST. It applies to entities that have entered into countertrade transactions as part of carrying on their enterprise, provided that that the transactions do not account for more than 10% (approximately) of the entity's total number of supplies. The Guideline does not apply to countertrade transactions between the members of a "barter scheme".

Broadly, the Guideline indicates that the Commissioner will not apply resources to verifyng compliance with GST reporting obligations for a countertrade transaction for taxpayers in the following circumstances:

- both parties to the transaction are registered for the GST;
- the parties engage in a countertrade transaction (directly exchange things, at arm's length without any monetary consideration);
- both entities make wholly taxable supplies to each other, with the amount of GST payable being 1/11th of the GST-inclusive market value of those taxable supplies;
- one party makes a wholly creditable acquisition for which they are entitled to a full GST credit;
- the net effect would be GST-neutral if both parties had the same tax period;
- the taxpayers each have records that show:
  - when the transaction was entered into and occurred,
  - what was exchanged;
  - the identity and ABN of the other entity; and
  - the GST-inclusive market value of the goods agreed to; and
- there is no evidence of fraud or evasion.

The Guideline includes four examples to illustrate whether the Commissioner would take a compliance approach under various scenarios.

Date of effect

The Commissioner will adopt the compliance approach outlined in the Guideline from its date of issue (18 November 2016).

Source: ATO, Practical Compliance Guideline PCG 2016/18, 18 November 2016, https://www.ato.gov.au/law/view/document?DocID=COG/PCG201618/NAT/ATO/00001.

Companies held to be resident and liable to tax in Australia

In the long-running Hua Wang Bank dispute, the High Court has unanimously dismissed appeals of the four corporate taxpayers involved, confirming that they were Australian residents for income tax purposes. Accordingly, the companies were found to be liable to tax in Australia on the profits they made from share-trading activities on the Australian Stock Exchange (ASX). In making this finding, the Court rejected the taxpayers' contention that because Perram J at first instance found that the directors of each taxpayer were resident abroad, and because meetings of those directors were held abroad, Perram J and the Full Federal Court should have held that the central management and control of each company was exercised abroad, and that the companies were not residents of Australia for income tax purposes.

Background

The appellants were four companies: Hua Wang Bank Berhad, Bywater Investments Ltd, Chemical Trustee Ltd and Derrin Brothers Properties Ltd. Their combined amount of tax in dispute was over $14 million plus penalties. The Commissioner had issued assessments for the 2001 to 2007 income years treating profits from the companies' acquisition and sale of securities on the ASX as income subject to tax in Australia

(under s 6(1) of the *Income Tax Assessment Act 1936*). The taxpayers claimed they were not liable for tax on the profits because their "central management and control" was in various overseas locations, meaning they were not Australian residents for tax purposes.

In particular, the taxpayers claimed that the companies' central management and control took place in the countries where they were incorporated (Switzerland, the UK and Samoa) because their directors were resident and held meetings of directors there. They further claimed that the profits were only subject to tax in the countries of incorporation because of the double taxation agreements (DTAs) then in effect. The parties did concede that if the taxpayers were found to be Australian residents, they would not be entitled to protection from Australian tax under the DTAs.

At first instance, in *Hua Wang Bank Berhad v FCT* [2014] FCA 1392, the Federal Court (Perram J) held that the taxpayers were residents of Australia, despite the directors being resident abroad. After an examination of the evidence, the judge found that the companies' "real business", and therefore their central management and control, took place in Australia. In particular, Perram J found that Chemical Trustee's, Derrin's and Bywater's real business was conducted in Sydney by a Sydney-based accountant (Mr Vanda Russell Gould). The Court also found that Mr Gould owned Hua Wang Bank Berhad.

On appeal, in *Bywater Investments Ltd v FCT* [2015] FCAFC 176, the Full Federal Court unanimously dismissed the taxpayers' appeals, holding that Perram J had been correct in concluding that each taxpayer had failed to discharge the burden of proving they were not Australian residents. Further, as none of the parties sought to challenge the Perram J's finding that the shares were trading stock, the Court said it would be inappropriate to reconsider the issue of whether profits from the sale of shares were on revenue account.

The Commissioner told the High Court that there was no error in the prior decisions. The Commissioner argued that a company's central management and control is located where its real business is carried on and, conversely, a company's real business is carried on where its operations are controlled and directed. Moreover, the Commissioner argued that where a company's operations are controlled and directed is "a pure question of fact to be determined, not according to the construction of this or that regulation or by-law, but upon a scrutiny of the course of business and trading".

Decision

The High Court unanimously agreed with the Commissioner and held that, as a matter of long-established principle, the residence of a company is a question of fact and degree to be answered according to where the company's central management and control actually occurs. Moreover, the Court emphasised, it was to be answered by reference to the course of the company's business and trading, rather than by reference to the documents establishing the company's formal structure and other procedural matters.

The High Court further held that the overseas locations of the companies' boards of directors were insufficient to make the companies "foreign residents" in circumstances where, on the facts (as found at first instance), the boards of directors had abrogated their decision-making in favour of Mr Gould, and only met to mechanically implement or rubber-stamp decisions he made in Australia.

For the same reasons, the High Court found that the companies could not rely on the relevant DTAs to make the case that their "place of effective management" was outside Australia.

Bywater Investments Ltd v FCT; Hua Wang Bank Berhad v FCT [2016] HCA 45, High Court, French CJ, Kiefel, Bell, Nettle and Gordon JJ, 16 November 2016, http://www.austlii.edu.au/au/cases/cth/HCA/2016/45.html.

ATO statement

Tax Commissioner Chris Jordan said the High Court's decision in *Bywater Investments Ltd v FCT* [2016] HCA 45 means that any parties who set up complex structures offshore "with the clear intent to avoid paying tax in Australia should take a hard look at what they are doing and whether they want to run the risk of being caught and seriously penalised".

Commissioner Jordan said the High Court's decision affirms the ATO's "resolve to pursue cases of blatant tax evasion – we can and will catch this type of contrived behaviour". He said the ATO will use all available powers and resources "to deal with such schemes and ensure all Australian residents pay the right amount of tax".

He said the High Court's finding was not a one-off decision. This case has a substantial litigation history, including 19 challenges to the evidence and procedure at the Federal Court, followed by an appeal to the Full Federal Court. "This was not an easy process", Commissioner Jordan said, but "the ATO will not shy away from difficult and complex cases, no matter how long they take to run, and no matter how many obstacles are put in our way".

Source: ATO media release, "High Court judgement confirms blatant tax evasion", 16 November 2016, https://www.ato.gov.au/Media-centre/Media-releases/High-Court-judgement-confirms-blatant-tax-evasion/.

Payment was assessable as "deferred compensation"

The High Court has unanimously dismissed a taxpayer's appeal and held that payments of US$160 million made to the taxpayer pursuant to an incentive "profit participation plan" after termination of his employment was income according to ordinary concepts. In particular, the Court found that the payments were "deferred compensation" for the services the taxpayer had performed. At the same time, the Court dismissed the taxpayer's claim that the amount was assessable as a capital gain, finding that it did not represent the proceeds for the future right to receive a proportion of company profits he was entitled to.

Background

The taxpayer was the employee of a global international commodity trading company (the Glencore Group) from January 1991 to December 2006 . The Glencore Group included an Australian subsidiary for which the taxpayer worked for the last four years of his employment. He held shares in the Group and participated in its various "profit participation plans" for key employees by way of being allocated units (or profit sharing certificates) in these plans.

The taxpayer's employment with the Glencore Group was terminated on 31 December 2006. He subsequently relinquished his claims (by way of the required "declaration") to his units in the profit participation plan (the Plan) then in existence and assigned his shares in the Group in consideration of the payment of US$160 million in 20 quarterly instalments over a five-year period (paid by a subsidiary of the Group).

The taxpayer returned the amount as a capital gain in the 2007 income year, as reduced by the 50% CGT discount. The Commissioner issued amended assessments, claiming the amount was assessable as either ordinary income, an ETP, dividends or non-share dividends.

At first instance, in *Blank v FCT* [2014] FCA 87, the Federal Court held that the amount was assessable as "ordinary income" in the income year when the entitlement to the payments arose. This was on the basis that the payments were "deferred compensation for services rendered" (because the Plan was intended to provide the taxpayer with compensation in consideration of services rendered), notwithstanding that the right to the payment arose after the termination of his employment.

In *Blank v FCT* (No 2) [2014] FCA 517, the Federal Court refused to re-open the case to allow the taxpayer to argue that s 23AG of ITAA 1936 (exemption of foreign income) applied to some of the payment as it related to his overseas service with the company. Instead, the Court found that s 23AG did not apply, as it required the foreign earnings to be exclusively derived from foreign service, and not from part of foreign service (as in this case). However, the taxpayer succeeded in arguing that the amount was derived in the 2008 income year.

Subsequently, in *Blank v FCT* [2015] FCAFC 154, the Full Federal Court confirmed in a majority decision that the payments the taxpayer received were assessable to him as ordinary income in the income year when the right to the payments arose, on the basis that the payments represented "deferred compensation" following the relinquishment of his right to participate in the company's Plan on termination of his employment.

The primary issue on appeal to the High Court was the proper "characterisation of the receipt of the payment in the taxpayer's hands". In particular, the issue was whether the payments were ordinary income as a reward for services or, as the taxpayer claimed, "the proceeds of the exploitation of interconnected rights that conferred on him a right to receive, in the future, a proportion of the profit of [the Group] and therefore assessable as a capital gain".

Decision

In unanimously dismissing the taxpayer's appeal, the High Court concluded that the amount was income according to ordinary concepts, on the basis that it was "deferred compensation" for services the taxpayer had performed in his employment. In so finding, the Court emphasised the following matters:

- "some things are so obviously income that their nature is unchallengeable", and one such thing is the reward for services rendered in the form of remuneration or compensation;
- the Plan expressly stated that the payment was deferred compensation from the taxpayer's employment and that the "deferred compensation" was "in consideration of the services to be rendered" by the taxpayer;
- the Plan also recorded that the taxpayer had no proprietary interest whatsoever in the Plan and that he did not acquire any right in or title to any assets, funds or property of the Group as a result of his participation in it; and
- what the Plan conferred on the taxpayer was an executory and conditional promise to pay an amount calculated by reference to profits.

Moreover, the Court found the facts that the "payments" were paid after the termination of the contract of service, by an entity other than his direct employer and separately to his ordinary wages did not detract from

its characterisation as income because the payments were “a recognised incident of his employment” with the Group.

At the same time, the High Court rejected the taxpayer’ s claim that his “associated rights” and entitlements under the Plan were of a proprietary nature. In this regard, the Court noted that the units (or profit sharing certificates) were issued to him solely for the purpose of calculating the “deferred compensation”. Further, the Court said the payment was not the proceeds of the exploitation of any anterior set of rights but was the promise to pay the taxpayer’s entitlement to profits on satisfaction of relevant conditions.

Likewise, the Court found that the rights created by the Plan were not mere “associated rights” of the shares in the ultimate holding company held by the taxpayer, as this was contrary to the express terms and purpose of the Plan. Neither did the “declaration” the taxpayer made on termination to relinquish his rights under the Plan and trigger his entitlement to the payments confer such a character on the payments.

In addition, the Court rejected that the payment was assessable under s 26(e) of ITAA 1936 (or s 15-2 of ITAA 1997). Again, the Court found this ignored the proper characterisation of the taxpayer’s rights under the Plan as an executory and conditional promise to pay money. Further, it was contrary to the purpose of s 26(e) (ie to ensure that receipts and advantages which are rewards for a taxpayer’s employment or services are treated as assessable income even if they are not paid fully in money, but by way of allowances or other advantages of a monetary value).

Accordingly, the Court concluded that the payment was ordinary income of the taxpayer in the form of deferred compensation for services he rendered as an employee, and therefore formed part of his assessable income pursuant to s 6-5 of ITAA 1997. At the same time, the Court confirmed that, as per the finding of the Federal Court, the income was derived in the 2008 income year, when the right to the payments arose.

Blank v FCT [2016] HCA 42, High Court, French CJ, Kiefel, Gageler, Keane and Gordon JJ, 9 November 2016, http://www.austlii.edu.au/au/cases/cth/HCA/2016/42.html.

ATO data-matching programs continue

On 26 October 2016, the ATO gazetted notices advising about a range of data-matching programs.

Share transactions 2016–2017 and 2017–2018

The ATO will continue to acquire details of share transactions. Data will be acquired for the period 20 September 1985 to 30 June 2018 from various sources, including:

- Link Market Services Limited;
- Computershare Limited;
- Australian Securities Exchange Limited;
- Boardroom Pty Ltd;
- Advanced Share Registry Services Pty Ltd;
- Security Transfer Registrars Pty Ltd; and
- Automic Registry Services (Automic Pty Ltd).

The ATO will collect various data items, including:

- full name and address;
- holder identity number (HIN);
- share registry number (SRN);
- entity name and ASX code;
- purchase date and price;
- sale date and price;
- share quantities acquired or disposed;
- corporate actions affecting shareholders (eg corporate reconstructions);
- broker identity;
- transaction codes;
- entity type; and
- direction indicator (buy or sell).

The ATO said the purpose of this data-matching program is to ensure that taxpayers are correctly meeting their taxation obligations in relation to share transactions. These obligations include registration, lodgment,

reporting and payment responsibilities. It is estimated that data for a total of more than 61 million transactions will be obtained. Based on previous programs it is estimated that records relating to 3.3 million individuals will be matched. The ATO seeks to retain data for a period of five years from receipt of all verified data files for each relevant financial year.

Source: Commissioner of Taxation Gazette, C2016G01398, registered 26 October 2016, https://www.legislation.gov.au/Details/C2016G01398; ATO website, "Share transactions 2016–17 and 2017–18 financial years data matching program protocol", 26 October 2016, https://www.ato.gov.au/General/Gen/Share-transactions-2016-17-and-2017-18-financial-years-data-matching-program-protocol/.

Credit and debit cards 2015–2016 and 2016–2017

The ATO will continue to acquire annually data relating to credit and debit card payments to merchants. Data will be acquired for the 2015–2016 and 2016–2017 financial years from the following financial institutions:

- American Express Australia Limited;
- Australia and New Zealand Banking Group Limited;
- Bank of Queensland Limited;
- Bendigo and Adelaide Bank Limited;
- First Data Merchant Solutions Australia Pty Ltd (previously BWA Merchant Services Pty Ltd);
- Commonwealth Bank of Australia;
- Diners Club Australia;
- National Australia Bank Limited;
- St George Bank;
- Suncorp-Metway Limited;
- Tyro Payments Limited; and
- Westpac Banking Corporation.

The ATO will collect details (such as name, address and contact information) of merchants with credit and debit card merchant facilities and the amounts and quantities of transactions processed.

The ATO will match the credit and debit card payment data provided by the 12 financial institutions against ATO records to identify businesses that may not be meeting their registration, reporting, lodgment and/or payment obligations. It is estimated that around 950,000 records will be obtained, including 90,000 matched to individuals.

The data will be used to:

- identify liquidated or de-registered businesses that are continuing to trade;
- assist in identifying "cash only" businesses, by exception; and
- promote voluntary compliance with tax obligations and assist the ATO to build intelligence about businesses.

The ATO seeks to retain the data for a period of five years from receipt of all verified data files for each relevant financial year.

Source: Commissioner of Taxation Gazette, C2016G01397, registered 26 October 2016, https://www.legislation.gov.au/Details/C2016G01397; ATO website, "Credit and debit card 2015–16 and 2016–17 financial years data matching program protocol", 26 October 2016, https://www.ato.gov.au/General/Gen/Credit-and-debit-cards-2015-16-and-2016-17-financial-years-data-matching-program-protocol/.

Online selling 2015–2016, 2016–2017 and 2017–2018

The ATO will continue to acquire annual online selling data. Data will be acquired relating to registrants who sold goods and services to an annual value of $12,000 or more during the 2015–2016, 2016–2017 and 2017–2018 financial years. Data will be sought from eBay Australia and New Zealand Pty Ltd, a subsidiary of eBay International AG, which owns and operates www.ebay.com.au.

The ATO will collect personal details (such as name, address and contact information) of online selling account holders and the values and quantities of transactions processed for each online selling account.

The ATO will match the data provided by online selling sites against ATO records to identify businesses that may not be meeting their registration, reporting, lodgment and/or payment obligations. It is estimated that between 20,000 and 30,000 records will be obtained and that around half of the matched accounts will relate to individuals.

The ATO said the data will be used to:

- identify those apparently operating a business but failing to meet their registration and/or lodgment obligations; and
- promote voluntary compliance with tax obligations and assist the ATO to build intelligence about individuals and businesses that sell goods or services via online selling sites.

The ATO seeks to retain the data for a period of five years from receipt of all verified data files for each relevant financial year.

Source: Commissioner of Taxation Gazette, C2016G01396, registered 26 October 2016, https://www.legislation.gov.au/Details/C2016G01396; ATO website, "Online selling 2015–16, 2016–17 and 2017–18 financial years data matching program protocol", 26 October 2016, https://www.ato.gov.au/General/Gen/Online-selling-2015-16,-2016-17-and-2017-18-financial-years-data-matching-program-protocol/.

Tax debt release applications refused

The Administrative Appeals Tribunal (AAT) has recently refused the applications of two individuals who sought to be released from their tax debts under s 340-5 of Sch 1 to TAA 1953. The cases are as follows.

Case 1: serious illness, but debt release refused

Background

As at 9 August 2016, the taxpayer's total liability amounted to $130,416. In 2006, the taxpayer was diagnosed with Parkinson's disease and was forced to retire early. He received payments under an income protection policy for the years ended 30 June 2010, 2011, 2012 and 2013, but was unaware until 2012 that the payments constituted assessable income. In January 2014, the taxpayer lodged tax returns for each of the years. In May 2014, the taxpayer applied to be released from his tax debts.

The AAT heard details about the taxpayer's assets and liabilities, including the taxpayer's home and an investment property. Together these properties comprised the bulk of the taxpayer's and his wife's assets. The taxpayer contended that, as a result of mortgages over the two properties in favour of his wife, he was unable to dispose of either property to raise any amount to pay the tax debt. It was also submitted that if one of the properties was sold, that would compound the effect of the taxpayer's illness and may make it more difficult for him to acquire food, clothing, medical supplies or accommodation, and to provide support for his son, who suffers from schizophrenia.

Decision

The AAT accepted that a serious illness and the presence of dependent children were matters to be taken into account when considering the individual circumstances of an application for release. It said the taxpayer's illness had obviously a profound effect on his life, including on his life expectancy. However, the AAT said it was not satisfied that the requirement that the taxpayer pay his tax liability would bring about "the dire results in respect of his health or otherwise as advanced on his behalf".

The AAT also heard details of a contractual will arrangement which, among other things, was said to secure mortgages in favour of the wife over the taxpayer's interest in the two properties. However, the AAT said it was not satisfied that the taxpayer was under any obligation to enter into the contractual will arrangement. It was also not satisfied that the taxpayer's wife would seek to enforce her rights under that arrangement or that the properties would not be available to him to meet his tax liabilities.

The AAT affirmed the Commissioner's decision, finding that the taxpayer would not suffer serious hardship if he was required to pay his tax liability. Even if it were a case of serious hardship, the AAT said it would not exercise its discretion to grant relief. The AAT considered that the taxpayer had not made proper provisions to meet his tax liabilities and preferred to pay his other debts.

Re ZDCW and FCT [2016] AATA 788, 7 October 2016, http://www.austlii.edu.au/au/cases/cth/AATA/2016/788.html.

Case 2: discretionary spend a consideration

Background

In November 2006, the taxpayer applied for and was granted a release from his tax debts relating to the year ended 30 June 2004. In January 2012, the taxpayer lodged his returns for the years ended 30 June 2007, 2008, 2009 and 2010. He applied for, but was not granted releases from his tax debts relating to those years. In February 2015, the taxpayer lodged his returns for the years ended 30 June 2012, 2013 and 2014. The taxpayer again applied to be released, this time for the years ended 30 June 2007, 2008, 2009, 2010, 2012, 2013 and 2014. The application for debt release was again refused. The taxpayer contended that he had an outstanding compliance history that was not properly considered and that his current circumstances were a result of a catastrophic financial event in 2005. He contended that he was still experiencing hardship

and was unable to meet even basic living necessities. The liability at 11 August 2016 to which s 340-10 of Sch 1 to TAA 1953 applied stood at $437,681 (comprising $242,246 primary tax and $195,435 general interest charge).

The taxpayer had been employed since January 2015 as a salesperson with a real estate agency based on the Sunshine Coast. The Commissioner pointed to the taxpayer's "unusually high level of discretionary spending, including on holidays, dining out and entertainment, which could be reduced". The AAT also heard details of the taxpayer's borrowings to purchase properties. The taxpayer contended that he and his former spouse did not invest any of their own equity into the properties but instead borrowed funds, and said there was no money that could have been used to meet his tax liabilities. He also contended that throughout this period he was continually affected by the catastrophic financial events of 2005, leaving him constantly stressed and anxious. In addition, the AAT heard details of the taxpayer's illegal early access to his superannuation benefits in the years ended 30 June 2007 and 2009. In total, the taxpayer accessed some $164,097. The AAT noted that the taxpayer had repaid some $88,238 to the self managed super fund.

Decision

The AAT agreed with the Commissioner's description of the taxpayer's discretionary spending. The AAT disagreed with the taxpayer's contentions and was of the view that he "simply gave priority to other matters and ignored his tax obligations". Overall, the AAT said the taxpayer had a "poor compliance history". The AAT considered its discretion to release the debt in favour of the taxpayer should not be exercised under these circumstances.

Re Moriarty and FCT [2016] AATA 796, AAT, 11 October 2016, http://www.austlii.edu.au/au/cases/cth/AATA/2016/796.html.

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