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Alerts, not alarms

Every now and then you might read or hear about a “taxpayer alert” being issued by the ATO. Taxpayer alerts are the ATO’s “early warning” signals to the public about a certain area of concern – it could be about fraudulent schemes, or dodgy investments, or perhaps about a tax minimisation tactic that the ATO has been made aware of and knows will get people into trouble.

Taxpayer alerts are the mechanism by which the ATO lets the general public know that there could be a problem, or a higher risk than usual, in an area of tax planning. It’s the taxman’s version of those “kangaroos next 10km” road signs, or “black spot” intersection signs.

If you do an internet search of “taxpayer alerts”, the search engine will most likely take you to an ATO “legal database” that lists more than 100 taxpayer alert documents, grouped into years and going back to 2002.

The alerts are written principally to let people know about emerging issues that are of concern, and spell out what’s under scrutiny (it could be a tax scheme or arrangement, or particular transaction). The alerts should also highlight the aspects that most worry the ATO.

Not every potential concern makes it to being the subject of a taxpayer alert. Nor is it the case that every item that is mentioned in an alert ends up being a real problem. Further examination can uncover a simple benign matter that is of no concern whatsoever. And if this is the case, a notification will be issued to let everyone know.

The sort of features that may lead to an alert being triggered, or at least a concern raised, will typically include:

- Arrangements that seem contrived
- No real underlying business purpose
- An economic return that seems to rely largely on the tax benefit
- Mechanisms in place for exiting an arrangement before income is generated
- Passing income through a tax-exempt body such as a charity
- Schemes involving tax havens.

The taxpayer alerts are not law and are also not to be confused with the ATO’s “public rulings”. But once investigations are done and consideration is made about where the ATO stands on an issue, a “ruling” or a “determination” will be made and distributed, or an alert will be withdrawn if it’s subsequently found not to be of concern to the ATO. Generally a notification will be published either way.

Where a subsequent tax ruling has been issued or a decision has been made, the alert will have a link to that.

Anyone who is thinking about entering into a scheme or tax arrangement that ends up being the subject of a taxpayer alert can ask for a formal determination from the ATO, or request a private ruling on the issue (although the ATO does not always have to issue a private ruling). A taxpayer alert should also name the tax officer involved, so you can contact that officer for advice or ask us to do this for you.

Important: Clients should not act solely on the basis of the material contained in Client Alert. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. Client Alert is issued as a helpful guide to clients and for their private information. Therefore, it should be regarded as confidential and not be made available to any person without our prior approval.