



ATO actions on trusts and tax avoidance

The ATO says that it recognises that most trusts are used appropriately and for legitimate purposes. It says it will continue to help those who make genuine mistakes or are uncertain about how the law applies to their circumstances.

The ATO has a number of “trust risk rules” in place to identify higher risk compliance issues — but at the same time, it acknowledges that most trusts do not trigger these risk rules.

The ATO’s stated priorities in relation to trusts are to:

- undertake focused compliance activity on privately owned and wealthy groups involved in tax avoidance and evasion arrangements using trust structures
- target known tax scheme designers, promoters, individuals and businesses who participate in such arrangements
- lead cross-agency action to pursue the most egregious cases of tax abuse using trusts
- undertake projects to gather intelligence on and deal with specific risks.

The rogue Trusts. This taskforce works by targeting higher risk trust arrangements in privately owned and wealthy groups. The ATO emphasises that these are

not ordinary trust arrangements or tax planning associated with genuine business or family dealings.

The trust risk rules

It is the use of trusts for purposes other than genuine business and family dealings that has attracted the ATO’s attention. Arrangements that have tweaked the taskforce’s focus include those where:

- trusts or their beneficiaries who have received substantial income that are not registered, or have not lodged tax returns or activity statements
- agreements with no apparent commercial basis that direct income entitlements to a low-tax beneficiary while the benefits are enjoyed by others
- there are artificial adjustments to trust income, so that tax outcomes do not reflect the economic substance – for example, where parties receive substantial benefits from a trust while the tax liabilities corresponding to the benefit are attributed elsewhere or where the full tax liability is passed to entities without any capacity or intention to pay
- revenue activities are mischaracterised to achieve concessional capital gains tax treatment – for example, by using special purpose trusts in an element of the trust landscape is dealt with

by the ATO's Tax Avoidance Taskforce – attempt to re-characterise ordinary income as discountable capital gains

- there are offshore dealings involving secrecy or low tax jurisdictions
- transactions are undertaken for the dominant purpose of changing the character of trust income in order to achieve lower rates of tax (for example, accessing withholding tax provisions)
- changes have been made to trust deeds or other constituent documents to achieve a tax planning benefit, with such changes not credibly explicable by other reasons
- transactions have excessively complex features or sham characteristics, such as circular distributions of income among trusts
- new trust arrangements have materialised that involve taxpayers or promoters linked to previous non-compliance – for example, people connected to liquidated entities that have unpaid tax debts.

The ATO says its taskforce does not operate covertly or by ambush, but rather that it is transparent in its aims to encourage voluntary compliance by publicising its activities and undertaking education projects. Its focus is necessarily on the privately owned and wealthy groups market and on the following risks that can, to a large extent, be ascertained from income tax returns lodged:

- accurate completion of return labels
- present entitlement of exempt entities
- distributions to superannuation funds
- inappropriate claiming of capital gains concessions by trusts

Failure to lodge a return is also likely to attract taskforce attention.

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