Recognising tax avoidance schemes

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Tax agents should be able to respond appropriately if a client asks about or is involved in a tax minimisation scheme. This requires an agent to understand the concept of tax avoidance and recognise the indicators of a tax avoidance scheme.

Differentiating between tax minimisation and tax avoidance

Tax minimisation is when taxpayers legitimately structure their affairs to reduce their tax liability. This is generally compliant with the literal meaning of the law and its purpose.

Tax avoidance is when taxpayers attempt to decrease their tax liability in ways that are not compliant with the purpose of the law, and may in fact conflict with anti-avoidance laws.

Recognising tax avoidance schemes

Tax agents should be able to recognise the indicators of a tax avoidance scheme.

The following is a list of characteristics that, alone or together, may indicate such a scheme. The scheme:

- is contrived or carried out in an artificial way
- creates tax benefits which are not related to the commercial activity, by using complex structures or intra-group transactions
- involves a large tax benefit but only a low level of financial risk which you would not expect

- attempts to duplicate the tax benefits of a single investment or activity, whether in Australia or overseas
- involves assumptions that can lead to excessive asset evaluations and inflated deduction claims
- includes circular funds movement, round robin finance, or limited recourse loans to be paid off by future earnings
- allows for exiting or winding up an arrangement to avoid tax collection or before net income is generated for investors
- is not carried out according to contracts or other legal documents
- takes advantage of concessions within the tax law or goes against the policy behind them
- uses tax exempt entities or entities with accumulated losses to wash income
- attempts to defer or avoid paying tax by deferring income or accelerating deductions, and/or
- involves a tax haven or bank secrecy country without any sound economic reason.

Responding to client enquiries about a potential tax avoidance scheme

It is a tax agent's duty to serve the best interests of a client and provide them with legally sound advice for their circumstances.

If a client inquires about a scheme that may be a tax avoidance scheme, an agent should ask about the key aspects of the arrangement and explain how the law would apply to the client's circumstances.

Investigating tax avoidance schemes

If an agent thinks a scheme is a tax avoidance scheme, the agent should:

- check licence details of the scheme at www.fido.gov.au
- check with the ATO if the scheme has a product ruling
- consider applying for a private ruling for the client to confirm the tax effects of the arrangement, or
- obtain legal advice from a suitably qualified tax lawyer on the arrangement.

