TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

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16 | Tax Evasion

Tax evasion is a heavy word. Accuse somebody of tax evasion and you surely get their attention. But what is tax evasion?

Tax Evasion

There is tax planning. There is tax avoidance. And then there is tax evasion.

Tax Planning

Most of us do tax planning for a living. It is the legitimate arranging of a person’s tax affairs to obtain a favourable tax result.

Tax Avoidance

Tax avoidance falls somewhere between tax planning and tax evasion.

You could describe it as the minimisation of tax while stying strictly within the law. But exploiting some weakness within the law to achieve a favourable tax outcome.

Tax avoidance is when you create artificial or contrived arrangements to obtain a tax benefit. The arrangement might allow you to not declare certain income. Or might entitle you to certain additional deductions. Or to share income amongst a number of entities. Typically entities with losses or entities taxed at lower rates.

A tax avoidance scheme generally involves the creation of legal obligations and rights, but the transaction may lack commercial reality.

Tax avoidance, prima facie, is not illegal. However a large portion of Australia’s taxation laws aims to reduce the incidence and extent of tax avoidance. Examples are the personal services income rules, company loss recoupment rules, Div 7A, transfer pricing and thin capitalisation.

In addition to these, there are various specific anti-avoidance rules. And failing that, there is the general anti-avoidance rules in Part IVA ITAA36.

Tax Evasion

So now we get to the heavy hitting. Tax evasion involves using illegal means to reduce tax. Examples are the falsification of records, non-disclosure of income or deducting fake or non-deductible expenses.

It is a deliberate attempt to misrepresent the true state of a taxpayer's affairs. It may consist of fraud, dishonesty, falsified records and contrived arrangements,

Examples are reporting less income, claiming additional deductions to which a taxpayer is not entitled and claiming input tax credits when not entitled.

The line between tax avoidance and tax evasion is not clear cut. Tax avoidance can easily lead to fraud and evasion depending on methods adopted to circumvent anti-avoidance provision, avoid detection or to hinder ATO compliance activities.

The suspicion or discovery of fraud or evasion by the Commissioner is significant as it allows the Commissioner to amend assessments which are otherwise out of time, greatly influences the amount of penalties that the Commission may apply and allows criminal charges to be laid.

Negligence

Negligence is different to fraud and evasion. It is an inadvertent mistake or a lack of understanding of the relevant laws. The penalties for negligence are far less severe.

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