



TECHNICAL UPDATE

COMMISSIONER TO UNDERTAKE FURTHER COMPLIANCE ACTIVITIES IN RESPECT OF 'DIVIDEND WASHING'

THE AUSTRALIAN TAXATION OFFICE (ATO) HAS ADVISED THAT IT WILL COMMENCE THE NEXT PHASE OF ITS DIVIDEND WASHING COMPLIANCE PROGRAM BY ISSUING LETTERS TO 500 TAXPAYERS WHO DID NOT RESPOND TO ITS INITIAL LETTERS, AND UP TO 1,500 OTHER TAXPAYERS WHO ITS UPDATED DATA ANALYSIS SUGGESTS MAY HAVE ENTERED INTO A DIVIDEND WASHING TRANSACTION.

The letters will ask those taxpayers to self-amend their tax returns in order to reverse franking benefits they may have obtained from dividend washing transactions.

As discussed in our previous [Technical Update \(of 15 April 2014\)](#), dividend washing generally involves a shareholder disposing of shares just after the shares have gone ex-dividend (the dividend will go to the person registered as shareholder at the ex-dividend date) and then soon after, they purchase the same or a similar number of shares in the same company where the shares are cum-dividend (the dividend will go to the purchaser of the shares). This generally results in the shareholder receiving two lots of franked dividends and two lots of franking credit offsets from what is economically one parcel of shares, provided each parcel of shares is held for the requisite 'holding period' (necessary for franking credit offsets to be available). These arrangements were seen as beneficial for shareholders that are either tax exempt or have an income tax rate of less than the corporate rate of 30% e.g. superannuation funds.

The Commissioner has two means available to him to deny the availability of the second tranche of franking credits under a dividend washing scheme, being:

- With effect from 1 July 2013, measures introduced into the *Income Tax Assessment Act 1997* which specifically deny the availability of such franking credits, and
- As addressed in Taxation Determination [TD 2014/10](#), s177EA of the *Income Tax Assessment Act 1936*, which could be applied to dividend washing schemes undertaken both before and after 1 July 2013.

SECTOR

Tax

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The ATO advises that:

- In line with a commitment it had previously provided, it will not impose any penalty on taxpayers who have entered into dividend washing transactions and who come forward to self-amend their tax returns before the date specified in the letter they receive from it, and
- Taxpayers who have entered into dividend washing transactions, but do not receive a letter from the ATO, will not be subject to penalties provided they amend their tax returns by 22 September 2014.

BDO Comment

There is no doubt that the new legislative measures will deny the benefits of dividend washing with effect from 1 July 2013. In addition, the arguments put forward by the ATO for the application of s177EA to deny the benefits of dividend washing schemes before that date are persuasive.

If you think you or your superannuation fund have been involved in a dividend washing arrangement (whether or not you have received a letter from the ATO on this topic), we suggest you contact your BDO Tax Adviser to discuss your options in this regard.

MORE INFORMATION

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