Taxation Update for Property Developers using Trusts for Capital Gains Tax Discounts

Date : August 15, 2014

The Australian Taxation Office has issued a warning to property developers using a complex loophole in trust activities to misaligned long-term investment strategies for short term profits.

There has been notice from the ATO on 28 July, 2014, that there will be increased auditing for arrangements that exhibit the following characteristics:

- developments that are advertised before completion or is sold in a short time-frame following;
- the trustee claims the 50% capital gains tax discount;
- documents prepared for the property provide a different intention as to the stated objective of the property developer; or
- the developer uses a trust when acquiring the property.
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Should a trust be subjected to an audit the ATO will consider whether the documents produced under the purchase and development of the property are consistent with an intention to acquire a long term investment as opposed to a short term profit.

An issue arises where a property developer may have changing financial circumstances or receive an unexpected offer which may cause them to sell the property sooner than expected. In these circumstances it is important for these changes to be clearly documented as the ATO will need verification that the developer was merely not trying to exploit the loophole.

If you would like to discuss this topic further, you should contact our property team at Matthews Folbigg on 9635 7966.

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