

# KQ NEWSLETTERS

September 2008

## PROJECT WICKENBY – OFFSHORE TAX SCHEMES

Paul Quinn considers Project Wickenby in light of recent client experience.

The Australian Taxation Office (ATO) has established a taskforce called Project Wickenby to investigate off shore tax fraud and money laundering by Australian taxpayers. The Federal Government has provided the taskforce with funding of \$305 million – this represents the Commonwealth's largest investment of resources in any one project outside of war.

The focus of Project Wickenby is to prevent income earned in Australia being sourced off shore or kept outside the Australian Tax system.

KQ Lawyers has experience acting for clients who were involved in a scheme considered to be serious tax evasion – evasion of more than \$100,000.

### THE TAX SCHEME

Our clients were involved in a Vanuatu based scheme promoted to them by a Sydney Accountant. It involved an offshore entity invoicing our client's Australian entity for fictional consultancy services, which were never rendered, and our client's entity then claiming the fictional services as tax deductions. The deducted monies were then returned to the Australian entity as a loan which was to be considered non-assessable by the ATO.

In such circumstances the ATO disallows the deductions claimed by the Australian entities. It then makes a tax assessment of those individuals who received the monies returned by the promoter and takes the view that those amounts were received as deemed dividends. The ATO will also levy penalties and interest on the evaded tax. Because the tax evasion is considered to be a fraud on the Commonwealth the matter maybe referred to the Commonwealth Director of Public Prosecution (CDPP) and if successfully prosecuted under the Commonwealth Criminal Code the tax payer will go to gaol – a term of not less than 2 to 3 years is likely, even for first offenders who are of exemplary (prior) character.

The ATO through the auspices of Project Wickenby is now targeting the promoters of such tax schemes and their participants. The ATO, along with other Commonwealth bodies are in the process of pursuing such parties vigorously.

### WHAT IS VOLUNTARY DISCLOSURE ?

For taxpayers involved in serious tax evasion (evasion of \$100,000 or more) – the reality is that they face the very real possibility of not just an investigation by the ATO but criminal prosecution by the CDPP. Faced with such a reality the desire to stay out of gaol becomes the tax payer's main focus.

To avoid investigation by the ATO and the prospect of gaol, taxpayers who have been involved in a scheme such as that described above, are strongly advised to come forward to the ATO and make a 'voluntary disclosure' and admit the amount of tax evaded and how it was evaded.

A voluntary disclosure takes courage and it requires the exercise of a great deal of skill and care on behalf of the tax payer's professional advisers and a resolute commitment on behalf of the tax payer.

Where the tax payer has been engaged in serious tax evasion the advantages flowing from a successful unprompted voluntary disclosure are great. Not only will the relevant shortfall penalties be reduced by up to 80% but the risk of criminal prosecution will be greatly minimised – if not eliminated.

The above said, it is critical to understand that a taxpayer who has made a voluntary disclosure is not automatically immune from prosecution and the prospect of gaol. However, the fact that the taxpayer has made a voluntary disclosure is a compelling factor to be taken into account by the ATO in whether or not it is in the public interest to refer the matter to the CDPP and have the taxpayer prosecuted.

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#### SUMMARY

Australia has never before seen anything like Project Wickenby. It is here to stay.

Project Wickenby represents a clear warning to taxpayers to get their tax affairs should be in order.

Any taxpayer who is unsure as to the legality of their tax affairs should seek advice urgently.

If the chance of a voluntary disclosure is possible, the taxpayer should move to immediately take advantage of what represents an outstanding opportunity to avoid investigation by the ATO and the very real likelihood of a prosecution by the CDPP.

In short, for taxpayers who have been engaged in serious tax evasion a voluntary disclosure is the most powerful tool available.

*\*\* Paul Quinn is a partner at KQ Lawyers. He, along with Danielle Skinner, Solicitor and Kelli Ennever, Para legal have worked very closely with Michael Inglis, Tax Barrister since January 2008 in the Project Wickenby space.*

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