

When moving foreign assets into or from Australia, resident taxpayers need to be mindful of the ATO's data matching capability as well as ensuring they document how, when, where and why those assets are moved.

The Australian Tax Office has made no secret of its position on foreign assets and income held by Australian tax residents, particularly in its pursuit of increased access to information about the international financial transactions of Australian taxpayers.

One of the clearest messages from the ATO has been that it is better to disclose foreign income, assets or dividends voluntarily than it is to be caught and pursued by the ATO.

Intentionally or otherwise, the ATO has warned repeatedly of stiff penalties for residents who fail to include any foreign assets in their tax returns.

A recent case before the AAT highlighted the importance of understanding how foreign asset transfers are perceived by the ATO when they occur and underscored the need for taxpayers to be able to provide proof of their transactions and demonstrate appropriate record keeping.

The case: Wu vs the ATO (Wu v FCT [2015] AATA 78)

The recent case highlighted the circumstances of a Chinese-Australian tax payer who, while resident in Australia for tax purposes, also had interests in a business in China.

He had lodged personal income tax returns from 2009 to 2012, and had lodged business tax returns for 2005 to 2012.

However several transfers of large deposits from China to his personal and business accounts in Australia were flagged in a report produced by **AUSTRAC**.

AUSTRAC is the anti-money laundering and counter-terrorism financing regulator, a specialist financial intelligence unit (FIU) overseeing the compliance of thousands of Australian businesses.

Its goal is to "... harden the financial sector against penetration from organised crime, terrorists or their sympathisers." Its reporting function is designed to capture and investigate unusual activity.



While it's not suggested that the funds were moved for any nefarious purpose, the ATO audit was triggered because the funds hadn't been disclosed in any of the tax returns, but were flagged in the AUSTRAC report as unusual.

The Commissioner conducted the audit on the taxpayer's transactions, income and tax affairs, which resulted in the increase of his taxable incomes over the relevant years by more than \$2 million.

Subsequently, the ATO identified the deposits as ordinary income and consequently issued updated assessments and penalties.

The onus of proof

The taxpayer argued that the deposits were his share of profits from a business venture in China and that they were derived prior to him becoming an Australian resident.

He also argued that his salary was significantly smaller than the ATO had identified, but that he'd used a salary certificate to obtain financing from a bank to purchase property in Australia.

While the AAT accepted that the evidence from the taxpayer's employer and bank statements were evidence of his claim around salary to obtain finance for property, there was no evidence backing up his claims that the transfers came from savings held in China, nor was there evidence to demonstrate how those savings were derived.

Plan for a cross-border strategy

The case highlights the importance of getting proper advice when moving funds to or from Australia as well as the requirement for properly documenting where the funds originated, the purpose for the transfer, and disclosing foreign assets to the Australian Tax Office in a timely manner.

Despite repeated warnings from the ATO about disclosing an individual's foreign assets, it is unclear if the message is getting through to taxpayers with overseas assets, incomes or dividends.

What is clear is that the ATO is not shy about penalising those it catches unawares and ignorance of the rules is no longer giving taxpayers much sway.

As always, we strongly recommend obtaining professional advice before moving to Australia.

Get more information

For more information about planning for and documenting your cross-border strategy, please contact us on 02 9957 4033.

Contact Us

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