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Deficient valuations: Tax penalties for false or misleading statements – are you liable?

The Australian Taxation Office (ATO) has published guidance on penalties that could apply for deficient valuations. Valuations for income tax purposes of assets such as real property, shares in companies and units in unit trusts, are relevant in a number of contexts, including the capital gains tax provisions, the maximum net asset value test, the market value substitution rule, the GST Margin Scheme, and for assets held in self-managed superannuation funds.

The ATO warns that taxpayers who undertake their own property valuations or use valuations from unqualified people may be liable to pay administrative penalties where the valuations later prove to be deficient.

Taxpayers (or their agents) who use a valuer or other qualified professional may also be liable for administrative penalties for making a false or misleading statement or for treating the income tax law in a manner that is not reasonably arguable where:

- they do not provide the valuer with accurate information to enable the value of items to be accurately assessed;
- they should reasonably have known that the information provided by the value was incorrect; or
- the valuation methodology / hypothesis is based on unsettled interpretations of the tax law or unclear facts.

Optional ATO valuation instruction form

To assist taxpayers in obtaining targeted valuations aligned with the tax law, the ATO has published an optional instruction form for instructing valuers, noting that "the reliability of valuations is very much dependent on the quality of information and level of detail provided to valuers."

The form provides specific warnings and requirements, including that the:

- the valuation advice or report may be submitted to the ATO and used in administering the taxpayer's tax affairs;
- the report may be made available to other government agencies and departments and presented to a Court or Tribunal;

- the valuer has the right to refuse to provide a valuation if not provided with required information; and
- the valuer may be required to appear as expert witnesses in a Court or a Tribunal in relation to the valuation, in which case they must be independent and impartial and have an overriding duty to assist the Court.

The valuer is also required to:

- advise the taxpayer of any conflicts of interest;
- consider the ATO Market Valuation for Tax Purposes Guide;
- state reasons for selecting a particular methodology over other methodologies; and
- list the personnel involved in the engagement and their experience and qualifications.

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