

Federal Court of Australia: Holds CA guilty of promoting 'tax exploitation scheme' for facilitating unreasonable R&D claims

Jan 07,2021

Federal Court of Australia holds Paul Bogiatto (Tax Practitioner) and three of his associated entities, collectively known as Lambda Chase Chartered Accountants (Lambda Chase) guilty of contravening the promoter penalty laws by engaging in conduct that resulted in taxpayers gaining a Research and Development (R&D) tax offset they were not entitled to; Revenue alleged that Mr. Bogiatto and his associated entities promoted tax exploitation scheme resulting from unreasonable R&D claims made by 14 taxpayers during the years 2012-2014, which they were not legally entitled to; Examines 3 critical matters to determine whether there was a contravention of promoter penalty laws namely: (1) existence of entity satisfying the definition of promoter, (2) existence of a 'tax exploitation scheme' and (3) identification of scheme benefit which the taxpayer got/ sought to get; Holds that in 13 out of the 14 cases where Mr. Bogiatto filed unreasonable/ false R&D tax claim, all the aforesaid three conditions were satisfied; Remarks that "Mr Bogiatto knew that the claims arising in relation to the implemented schemes he was marketing and encouraging were unavailable or exaggerated.Mr Bogiatto deliberately put forward claims which he knew were wholly or partly unjustifiable and engaged in evasion."

Observations of the Court:

1. States that Mr. Bogiatto was involved in soliciting the taxpayers to engage services of Lambda Chase, collated information and was responsible for submission of the taxpayers R&D tax incentive application & consequent amended tax return.
2. Observes that in 13 out of the 14 cases, Mr. Bogiatto (a) marketed and encouraged interest of the taxpayers in the alleged scheme, (b) received consideration in the form of promise to pay in respect of such marketing of scheme (30% of R&D claim as stipulated in terms of engagement) and (c) had substantial role in respect of marketing the scheme, thus satisfying the definition of 'Promoter' under Sec.290-60(1).
3. Next, the Court examines the twin conditions for existence of a tax exploitation scheme as per Sec.290-65(1) i.e. (a) dominant purpose of carrying out the scheme and (b) absence of reasonable argument that any scheme benefit was available under the law.
4. Noting that Mr. Bogiatto had advised the taxpayers that they were eligible for R&D tax offset and to lodge an amended tax return, holds that he entered into or carried out the scheme with the sole or dominant purpose of getting a scheme benefit.
5. States that although the Revenue merely contended that in the absence of adequate records substantiating the R&D claim, the taxpayers were not entitled to any of the scheme benefit, the claim made was grossly exaggerated;
6. Remarks that "No reasonable accountant could have considered it to be truthful.", holds that it was not reasonably arguable that the scheme benefit was available at law.

Click below to read and to download the ruling.