CPA Australia Ltd
ABN 64 008 392 452

Level 20, 28 Freshwater Place
Southbank VIC 3006 Australia

GPO Box 2820 Melbourne
VIC 3001 Australia

P 1300 737 373
Outside Aust +613 9606 9677

cpaaustralia.com.au

Adam Johnson
The Australian Taxation Office

Email: adam.johnson@ato.gov.au

4 November 2022

Dear Adam,

Draft Taxation Determination - Income tax: use of an individual's fame by related entities

In relation to **Draft TD 2022/D3** *Income tax: use of an individual's fame by related entities*, our observations and comments are as follows:

The difference in tax treatment depending on how the services of the individual with fame are engaged, in paragraphs 10 and 11, is a concern. Effectively, it highlights that the ATO's interpretation that the individual should include the assessable amount instead of the related entity can be circumvented simply by having the related entity engage the individual with fame to provide services instead. Although we note that the ATO states that consideration would also need to be given in these circumstances to the potential application of the personal services income rules in Part 2-42 or the application of Part IVA of the *Income Tax Assessment Act 1936*.

It is concerning that by simply re-arranging the 'direction' of the engagement, one can easily achieve a tax outcome that could overcome the ATO's interpretation that the individual should include the assessable amount instead of the related entity. That is, that the adverse tax outcome detailed in paragraph 10 could be averted by having the related entity engage the individual with fame to provide the service, instead of having the individual authorising the related entity to use their fame for a fee. This is a change in form without a change in substance, i.e., the entity being taxed as opposed to the individual with fame.

Therefore, if paragraph 11 is adopted in the final ruling in its current form, it will promote and educate taxpayers to re-structure their transactions to overcome the application of the law as interpreted by the ATO by having the related entity engage the individual with fame to provide the service. On this basis, consideration might be given to omitting the approach espoused in paragraph 11, in its entirety, to stop such tax avoidance.

If paragraph 11 is retained without changes, the ATO must provide further comments and examples of instances where the mere reorganisation of the 'direction' of the engagement would not avoid the outcome of having the individual include the assessable amount.

Further comments from our members are included in the Appendix section of this letter for your consideration.

If you have any queries, please contact me on +61 3 9606 9666 or **elinor.kasapidis@cpaaustralia.com.au**.

Yours sincerely,

Dr Gary Pflugrath

Executive General Manager

Policy and Advocacy

Appendix

Comments received from our members

- This is interesting on the basis that there does not seem to be a distinction between personal exertion income (contract for playing the sport) and income generated from an activity which is in addition to the personal exertion income. A proportion of the additional income other than playing of the sport should be able to be licenced to another entity. What is the difference if the NRL uses the players image to promote the game and generate income from the images and that income is not attributable to the player whose image is being broadcast on billboards, buses etc?
- Rather than charge the income directly to the person whose fame is being exploited, the ATO should look to make rules about the value for which the right to exploit fame is being sold by the individual which may include valuation rules based on future profits, etc. This is more streamlined to the general rule of how taxation systems work rather than create an extraordinary rule for determination of income in the hand of a specific individual by bypassing another entity.
- The critical question is what is the difference between a person trading their fame or image, and a person trading their knowledge or expertise? For example, if a person with extensive and valuable engineering or accounting knowledge established a related entity to work with their clients using that expertise or knowledge, then how is that different to a person who has established fame and recognition using a trading entity to work their clients? It seems a very dangerous precedent to effectively undermine legitimate trading entity structures based only on the fact that the person is famous or has built-up recognition.