Lendlease faces tax audit on retirement villages

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Property company Lendlease has quietly disclosed for the first time that it is being audited by the Australian Taxation Office over the partial sale of its retirement village business, which Aware Super and Dutch fund APG bought into.

The estimated $300 million clash with the Tax Office comes after Lendlease's former tax adviser blew the whistle and accused the company of double dipping on tax deductions, as previously reported by *The Australian Financial Review*.

Lendlease chief executive Tony Lombardo will front the company's AGM on Friday. **Arsineh Houspian**

Lendlease's rating by the ATO as having a high level of trust on tax was marked as "provisional" for 2018 in a tax assurance report, Lendlease noted in its tax report for the year ended June 30, 2021.

"The overall rating is provisional because the ATO is doing an audit of the partial sale of our Retirement Living business in the 2018 year," it noted.

The board of Lendlease and chief executive Tony Lombardo, a former chief financial officer, will face shareholders at the company's annual general meeting on Friday.

Lendlease had earlier dismissed the *Financial Review's* reporting as "speculative".

On Wednesday, Lendlease spokesman Stephen Ellaway said: "Lendlease is not in dispute with the ATO.

"In August 2021, the ATO notified Lendlease it was conducting an audit of the partial sale of our Retirement Living business in the 2018 year.

"We believe our tax treatment of this sale is in accordance with the law and consistent with the ATO's ruling (TR2002/14) on the taxation of the retirement living industry.

"We lodged our 2018 tax return on that basis, continue to co-operate with the ATO, and await the outcome of its review."

Officially, a tax "dispute" can only commence with the ATO once it has issued a decision. The tax issue could also have implications for Aware Super and APG.

Aware Super took a 25 per cent stake, worth about $460 million, in the retirement village business in February. Dutch fund APG bought a 25 per cent stake in October 2017. Lendlease controls the remaining 50 per cent.

If the ATO finalises an adverse tax finding against Lendlease for the retirement villages, Aware Super and APG could face a reduced "cost base" for the asset and a higher capital gains tax liability on a future sale.

The *Financial Review* asked Aware Super and APG if they had received warranties or indemnities from Lendlease for potential tax issues.

Aware Super spokeswoman Diana Lloyd said: "We were aware of the draft ATO determination when we undertook our due diligence for this investment and considered this as part of our normal review process.

"As a result, we believe if the ATO's draft determination is confirmed, we have the necessary measures in place to ensure that our members' interests are protected."
Netherlands-based APG declined to comment.

The Tax Office issued an industry-wide draft tax determination in October 2019 that was triggered by Lendlease's accounting of retirement villages.

Lendlease spent about $1.7 billion on retirement villages and swapped the contracts with residents from leases to loans around 2014. It legitimately claimed tax deductions for swapping the contracts.

But a point of contention with the ATO is that Lendlease did not adjust the tax carrying value of the retirement village assets to calculate future capital gains tax, and it did not recognise a deferred tax liability.

Tax specialist Anthony Watson, who has advised large Australian corporations for 30 years, including Lendlease, has said he believes the property company "double counted" its tax benefits, resulting in inaccurate financial accounts.

The estimated tax benefit of at least $300 million is reflected in Lendlease's "unused tax losses" jumping from $37.7 million at June 30, 2012, to $420.6 million by June 30, 2015.
ATO Second Commissioner Kirsten Fish said last month the draft ruling represents the ATO's preliminary view, but didn't relate to any one particular taxpayer.

"We stand very firm on the principle that we don't accept that an amount could be both deductible and included in cost base," she said.

"We are looking to finalise what we do with that tax determination, with an understanding of the interrelated issues and, in particular, what assumed liabilities in fact do go into cost base."

ATO Second Commissioner Jeremy Hirschhorn was pressed about the Lendlease tax issue by independent Senator Rex Patrick at a parliamentary hearing on October 27.

"The company have disclosed, in their most recent financial statements, that they are under audit on this issue around the partial sale of their retirement village," Mr Hirschhorn said.

"There is a separate, related draft of taxation determination."

Senator Patrick asked if Lendlease had included a contingency in its financial accounts as a potential cost to the company.

Lendlease has not included a contingency.

In career moves unrelated to the tax matter, former chief executive Steve McCann and former CFO Tarun Gupta left Lendlease in May to become the chief executives of Crown Resorts and Stockland, respectively.