



**Building a better
working world**

Ernst & Young
200 George Street
Sydney NSW 2000 Australia
GPO Box 2646 Sydney NSW 2001

Tel: +61 2 9248 5555
Fax: +61 2 9248 5959
ey.com/au

Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

1 November 2023

Via email: corporations.joint@aph.gov.au

Commissioner of Taxation's case against a former EY partner

Dear Committee,

As you may be aware, earlier today the Federal Court varied the suppression order that prevented the naming of EY in relation to the Commissioner of Taxation's proceedings against a former partner. These proceedings allege the former partner promoted a tax exploitation scheme to individuals who are clients of EY and have been the subject of media coverage over recent weeks.

EY asked for the court to vary this order, as part of our commitment to transparency, and given the increasing media and parliamentary speculation regarding the identity of the former partner's firm.

I can confirm that the individual is a former partner of EY and was terminated for cause in August 2022 for receiving in excess of \$700,000 in unauthorised financial benefits in connection with advice supplied to clients.

The former partner's actions were isolated in nature, and he acted without the knowledge or approval of EY and acted contrary to the firm's well-established policies and procedures.

EY is not named as a party to the Commissioner's proceedings and the Commissioner makes no allegations of wrongdoing regarding EY's conduct in the proceedings. EY was not involved in the application for suppression by the former partner.

Despite our desire to be transparent, prior to today, we have been prohibited from discussing this matter, as the suppression order granted to the former partner prevented EY from confirming our involvement, and prior to this, we have been limited due to tax secrecy provisions.

The former partner's name, as well as those of taxpayers and witnesses, is still subject to the suppression order, and EY is prevented from providing further details regarding the case as this could identify the former partner, taxpayers or witnesses and breach the suppression order that is still in place.

Upon being made aware of issues regarding the former partner's behaviour, EY's leadership was immediately informed and EY initiated quality reviews, as well as initiating a number of associated workstreams. EY established the former partner acted in isolation and without the approval of EY, and contrary to the firm's well-established policies and procedures. We moved quickly to terminate the partner once the facts were established.

EY has cooperated fully with regulators throughout this process and will continue to do so.

The effectiveness of our regulators has been clear here and these events have demonstrated that the consequences for our partners should they breach policies, professional and ethical obligations are severe.

EY's objective is to live up to the high standard that you and the community expect of us, but when we fall short, to correct for that, take necessary actions and make any necessary changes. Through these events EY has identified opportunities to introduce additional controls that strengthen the monitoring of compliance with the relevant policies and procedures.

On 13 September 2023, EY entered into an enforceable voluntary undertaking with the Commissioner as a commitment to undertake these improvements. The enforceable voluntary undertaking is the first such undertaking EY has entered into with the Commissioner and includes undertakings that EY will:

1. continue to apply EY's management processes for breaches of EY Policy;
2. provide additional training on EY's Gifting Policy and specific aspects of EY's Tax Policies;
3. provide regular updates on progress of these matters and their effectiveness.

Let me reiterate that the former partner acted in isolation and without the approval of EY, and contrary to the firm's well-established policies and procedures. At no stage has EY sought to deny or cover this matter up.

We are committed to being as transparent as we can in relation to this matter.

Our public statement in relation to this matter is attached.

Please don't hesitate to give me a call if you have any questions.

Yours sincerely,

David Larocca
Oceania CEO and Regional Managing Partner

Attachment: Public Statement regarding EY's Enforceable Voluntary Undertaking with the ATO in relation to a former EY Partner

Earlier today the Federal Court made orders varying the suppression order that prevented the naming of EY in relation to the Commissioner of Taxation's (Commissioner) proceedings against a former partner of EY.

The order was varied following EY making an application to the Court to amend the suppression order to allow EY to identify itself as the firm referred to in proceedings. The suppression orders remain in place in respect of the identity of a number of other parties affected by the proceedings, including the former partner.

EY elected to make the application to vary the suppression order to demonstrate our commitment to transparency and given the significant uncertainty that the proceedings have created in the market.

Those proceedings allege the former partner proposed a tax exploitation scheme to the partner's clients.

EY is not named as a party to the Commissioner's proceedings and the Commissioner makes no allegations of wrongdoing by EY in the proceedings.

Upon being made aware of issues regarding the former partner's behaviour, EY's leadership was immediately informed and EY initiated quality reviews, as well as initiating a number of associated workstreams.

EY established the former partner acted in isolation and without the approval of EY, and contrary to the firm's well-established policies and procedures.

The former partner was terminated for cause in August 2022 after disclosing that they received in excess of \$700,000 in unauthorised financial benefits in connection with the client transactions subject to the proceedings. These unauthorised financial benefits, received in relation to the transactions described in the proceedings, gave EY cause for concerns about the former partner's transactions, advice and conduct.

EY has cooperated fully with regulators throughout this process and will continue to do so.

Through these events EY has identified opportunities to introduce additional controls that strengthen the monitoring of compliance with the relevant policies and procedures.

On 13 September 2023, EY entered into an enforceable voluntary undertaking with the Commissioner as a commitment to undertake these improvements. The enforceable voluntary undertaking is the first such undertaking EY has entered into with the Commissioner and includes undertakings that EY will:

- continue to apply EY's management processes for breaches of EY Policy;
- provide additional training on EY's Gifting Policy and specific aspects of EY's Tax Policies;
- provide regular updates on progress of these matters and their effectiveness.

EY has notified CAANZ and the Law Society that Court proceedings have been issued by the Commissioner against a former partner, and had previously notified CAANZ regarding the enforceable voluntary undertaking.

David Larocca, Oceania CEO and Regional Managing Partner said: “The former partner’s absolutely unacceptable conduct led to their termination in August 2022. Their termination is a clear demonstration that their conduct was, and is, completely contrary to the firm’s values and code of conduct.

“The allegations also involve deeply disappointing behaviour and actions by the former partner that contravene a range of firm policies that have been in place for many years. EY is very clear that the behaviour alleged against the former partner are the isolated actions of a rogue operator, and are in no way reflective of the way we do business.”

“We fell short in this instance and I regret that we didn’t identify and stop this behaviour earlier. The undertaking reflects our strong commitment that when we fall short, we learn from it, take the necessary actions and in this case, make the necessary changes to strengthen compliance with our policies. A number of legal avenues are being pursued by EY against the former partner.”

The former partner’s name is still subject to the suppression order, and EY is prevented from providing any further details which could identify the former partner, taxpayers, and witnesses, as this would be in breach of the Court’s order.

ENDS