

## CASE SUMMARY

# TRA finds the disputants suppressed income.

Decision date: 16 January 2024

CSUM 24/01

## CASE

**TRA 0004/21 [2024] NZTRA 001**

## LEGISLATIVE REFERENCES

Income Tax Act 2007, ss CA1(2), CB1, CE1(1).

Tax Administration Act 1994, ss 89, 138B, 149A(2).

Goods and Services Tax Act 1986, ss 3A, 8(1), 11(1), 20(1), 20(3),

## LEGAL TERMS

Business income; unreported income, inheritance payments; income suppression, expenditure, GST liability, record keeping, res judicata, evidence.

## FORUM

Taxation Review Authority (Auckland)

## REVENUE TYPE(S)

Income Tax; Goods and Services Tax

## TAX IN DISPUTE

\$925,000

## DATES HEARD

15-19 May 2023, 28-30 June 2023 & 21 July 2023

## Summary

The Taxation Review Authority (TRA) found in favour of the Commissioner, confirming assessments made in relation to 10 payments Mr A and the company (**the disputants**) claimed were inheritance payments from Mr A's grandfather's estate in Afghanistan. The Commissioner argued the payments were business income from the disputant's car parts business and made assessments on this basis. The TRA found the evidence supported the Commissioner's position and the disputant's had not satisfied their onus to show the assessments were wrong and by how much.

In addition, the TRA found in favour of the Commissioner in relation to the GST assessments that included the disputed deposits, disallowed disputed expenditure, and adjusted the disputant's zero rating of exports.

## Impact

The outcome of this case turns on its facts with the TRA finding the evidence (or lack thereof) did not support the disputant's position as to the origin of the 10 payments.

## Facts

The disputants operated a business buying and selling car parts for export to a third party based in the United Arab Emirates (**UAE**). An audit of the disputants determined the business had failed to return all its taxable income including ten specific payments made to the bank accounts of the disputants.

The disputants argued the payments were funds of a private and capital nature sourced from the sale of assets held in Afghanistan by the estate of the company director's deceased grandfather. The transfer of the funds from Afghanistan to a business associate in the UAE who then transferred the funds to the bank accounts of the disputant's was necessary because of the restrictions on money leaving Afghanistan.

Further the disputants' argued the Commissioner's assessments overtaxed the company by not only mischaracterising the inherited funds but also by failing to accurately calculate the business income using a more accurate alternative approach which did not:

- Treat the inherited funds (**disputed deposits**) as taxable supplies that included a GST component.
- Exclude input tax deductions on legitimate business expenses (**disputed expenditure**) incurred when paying for business expenses and the purchase of stock.

- Use the standard rate of GST for taxable supplies that were, the disputants argue, zero-rated supplies of exported second hand vehicle parts acquired from unregistered persons before 6 October 2009.

The Commissioner argued the disputants' explanations were implausible and not consistent with evidence, the disputed deposits were routine business receipts, probably business income and, accordingly, taxable.

The Commissioner further argued he was correct to disallow the disputed expenditure because the invoices provided by the disputants were not authentic and/or could not be supported by evidence, and in using the standard rate of GST to account for taxable supplies on the exported second hand vehicle parts that that were acquired before 6 October 2009.

## Issues

The substantive issues for consideration were:

In relation to income tax:

- Whether the disputants could establish the disputed deposits were not income, but inheritance payments received from the grandfather's estate in Afghanistan;
- Whether the disputants were entitled to deductions for the disputed expenditure.

In relation to GST:

- Whether the disputants were required to include the value of the disputed deposits as taxable supplies in the GST returns; and
- Whether the disputants were entitled to input tax deductions for the disputed expenditure; and  
Whether the disputants were entitled to zero rate supplies of exported second-hand motor vehicle parts acquired from unregistered persons prior to 6 October 2009.

In relation to additional issues raised during the hearing:

- Whether the NOPA confines the arguments presented for the disputants ie: can the disputants have a more favourable outcome from the TRA than claimed in their NOPA; and
- Whether res judicata precludes the disputants from receiving a more favourable outcome than that determined in the preceding criminal proceedings against Mr A for evading tax of \$399,000.

## Decision

### Disputed Deposits

The TRA found the disputed deposits were more likely than not business receipts and that while it was plausible there could have been inheritance remittances or entitlements, it was not plausible, or at least, not proven, that any of the ten disputed deposits were such receipts. The TRA could not rely on any evidence that identified and marked out any of the disputed deposits as being sourced from the sale of the inherited assets rather than business receipts.

### Disputed Expenditure

The TRA found it could not conclude on the balance of probabilities that the Commissioner's assessments were wrong because he failed to accept at face value the invoices that were not part of the suppliers' business records. The contentious invoices relied on by the disputants could only be viewed in the context of Mr A's earlier admission that he had engaged in tax evasion.

The policy underlying the onus and standard of proof, reflects the reality that is underpinned by law, taxpayers must diligently keep accurate business records and failure to do so is at their peril.

### Taxable Supplies and Input Tax Deductions

GST and income tax have quite different legal considerations, but in terms of quantification, both largely involve the same transactions and quantification of them. Accordingly, the conclusions reached regarding business income and expenditure preclude any change in the GST assessments.

### Zero-Rated Supplies

The authority found the legal position on GST on second hand goods exported prior to 6 October 2009 is clear and there was no basis to take a different view.

### Additional Issues

In relation to the res judicata issue, the TRA found that nothing that lay within its jurisdiction in these proceedings could be seen as inconsistent with the judicial determinations in the criminal proceedings. Those earlier proceedings specifically recognised the questions of quantum were deferred and to be determined separately.

As the disputants had not proved by how much the assessments were wrong, the TRA did not have to answer the question as to whether they could claim a more favourable position than they took in their NOPA.

## About this document

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