Inland Revenue
Te Tari Taake

TECHNICAL DECISION SUMMARY > PRIVATE RULING

WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKATAUNGA TŪMATAITI

Transfer of property and whether income arises

Decision date | Rā o te Whakatau: 1 November 2023

Issue date | Rā Tuku: 13 May 2024

TDS 24/09

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Subjects | Kaupapa

Income tax: Disposal of personal property, income vs capital; tax avoidance

Taxation laws | Ture tāke

All legislative references are to Income Tax Act 2007 unless otherwise specified.

Facts | Meka

1. This was an application for a private ruling.
2. The non-resident Applicant is in business and proposes it will transfer shares in company A (A) to limited partnership B (B) as a capital contribution (the First Transfer).
3. At the same time the Applicant will transfer a percentage of its interest in B to two limited partnerships (the LPs) equally as a capital contribution (the Second Transfer).
4. The transfers are to be undertaken due to regulatory requirements of a foreign jurisdiction.
5. The Applicant holds its interests in A for long-term investment.

Issues | Take

6. The main issues considered in this ruling were:
   - Whether the transfer of the interests in A by the Applicant to B gives rise to income.
   - Whether the transfer of the interests in B by the Applicant to the LPs gives rise to income.
   - Whether the arrangement constitutes tax avoidance under s BG 1.

Decisions | Whakatau

7. The Tax Counsel Office (TCO) concluded:
   - The transfer of the interests in A by the Applicant to B does not give rise to income of the Applicant under ss CA 1, CB 1, CB 3, CB 4 or CB 5.

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- The transfer of the interests in B by the Applicant to the LPs gives rise to income to the Applicant under s CB 4 equal to the value of the interests in A on the day of the transfer.
- The Applicant is allowed a deduction equal to the value of the interests in A on the day it acquires the interests in B under s DB 23.
- The general limitations in ss DA 2(3), DA 2(4), DA 2(5) and DA 2(6) do not apply to deny the deduction.
- The deduction is allocated to the income year in which the Applicant disposes of the interests in A under s EA 2(2).
- The transfer of the interests in B by the Applicant to the LPs does not give rise to "net income" or "net loss" (as calculated under s BC 4) of the Applicant in the year of the transfer.
- Section BG 1 does not apply to the arrangement.

Reasons for decisions | Pūnga o ngā whakatau

Issue 1 | Take tuatahi: Transfer of interests in A to B

Section CA 1(2) – Income under ordinary concepts

8. TCO first considered whether the transfer of the Applicant's interests in A to B resulted in income under ordinary concepts (s CA 1(2)).

9. For an amount to be "income under ordinary concepts", the amount must be something that "comes in" to a person and is in money or money's worth.[1]

10. If payments have a quality of regularity or recurrence, then they become part of the receipts upon which the recipient may depend for their living expenses. However, that factor would not be enough on its own. Consideration must also be given to the relationship between payer and payee, and to the purpose of the payment. It is the quality of the payment in the hands of the recipient which is important.[2]

11. Receipts that are on capital account are not income according to ordinary concepts.[3]

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[1] *Tennant v Smith* [1892] AC 150, *CIR v Parson (No. 2)* [1968] NZLR 574

[2] *Reid v CIR* (1985) 7 NZTC 5,176

[3] *Case S86* (1996) 17 NZTC 7,538

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12. The Applicant will receive 100% of B's interests in consideration for the disposal of its interests in A. The interests are money's worth as they are valuable and can be converted into money if sold.

13. However, this receipt could not be said to have a quality of regularity or recurrence or form part of the receipts that the Applicant would depend on.

14. In addition, if the receipt is capital, then s CA 1(2) will not apply. TCO concluded that the proceeds of A's interests are capital in nature and not income under s CB 1 (see below). Therefore, the transfer of A's interests by the Applicant to B does not give rise to income of the Applicant under s CA 1(2).

Section CB 1

15. Under s CB 1(1), an amount derived from a business is income of a person. The term "business" is defined in s YA 1 as including any profession, trade, or undertaking carried on for profit.

16. The mere fact that a business is being carried on does not mean that all amounts derived by the Applicant are income under s CB 1. The essential question in determining whether an amount is income from a business is whether the amount was derived from the current operations of the business, and not merely connected to the fact that the business existed.[4]

17. TCO considered the relevant case law and applied the following factors to assist in determining whether an investment is part of the taxpayer's business or on capital account:

    - Whether the investment was intended to be held long-term, including the reasons for the original acquisition and the reasons for disposal. In some circumstances, the reason for the sale may support a contention that the shares were otherwise intended to be held long-term. For example, where the investment is sold because of reasons outside the taxpayer's control;[5] due to unanticipated changes in circumstances;[6] or following an unsolicited offer.[7]

[4] *CIR v City Motor Service Ltd; CIR v Napier Motors Ltd* [1969] NZLR 1010

[5] *State Insurance Office v CIR* (1990) 12 NZTC 7,035 (HC)

[6] *Rangatira Ltd v Commissioner of Inland Revenue* (1994) NZTC 11,197 (HC), (1995) 17 NZTC 12,182 (CA), (1996) 17 NZTC 12,727 (PC); *National Insurance Company of New Zealand v CIR* (1997) 18 NZTC 13,489 (HC); (1999) 19 NZTC 15,135 (CA)

[7] *Waylee Investments Ltd v CIR* [1990] STC 780

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- The scale of operations and the volume of similar transactions by the company, including the type of company the shares are held in. The greater the number of share sales and the larger the amounts involved, the more likely it is that the shares will be considered to be held on revenue account with trading being an ordinary incident of the taxpayer's business. In this regard, investment in sound well performing companies may be considered to support a holding as a capital investment.[8]
- The degree of involvement of the taxpayer in actively monitoring the investment. Frequent and active monitoring of the portfolio may suggest that the shares are held on revenue account with trading being an ordinary incident of the business.
- The degree of separation between the investment in question and other, business, investments of the taxpayer. Although a separate portfolio is not necessary[9], at a minimum, it must be objectively possible to differentiate between the investments that are asserted to be held on capital account and other trading investments.
- The source of the funds used to acquire the investment.
- Whether the investments are treated as part of the taxpayer's business or are available to meet claims of the business.
- How the investments are treated for accounting purposes.

18. These factors are not an exhaustive list and anything that indicates one way or the other whether the shares were a part of the taxpayer's business, in the circumstances, could potentially be relevant. Importantly, not all of the factors will necessarily be relevant to any given situation.

19. After consideration of these factors TCO concluded that the interests that the Applicant held in A were capital in nature because:

- The Applicant intends to hold the interests in A long term. There have not been any disposals of shares since the first tranche was acquired before 2010. The Applicant derives significant annual dividend income from the interests in A.
- The disposal arises from a one-off event for a foreign countries' regulatory purposes. There are no similar transactions to compare this disposal against. The Applicant derives no economic gain from the disposal unlike other cases

[8] *Rangatira Ltd v Commissioner of Inland Revenue* n 6

[9] *State Insurance Office v CIR* n 5

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where a certain yield was required, or the disposal gains were used for the general business.

- The Applicant has representatives on the board of A through an associate.
- The interests in A are treated differently from short term securities for accounting purposes.
- It is extremely unlikely that recourse would need to be made to the interests in A to meet claims made against the Applicant in relation to its business obligations (because of more liquid investments available).
- Although the interests in A were acquired using general short-term funding, this itself is not determinative, and does not outweigh the capital factors discussed above. In particular, the interests in A are not readily realisable assets, which are available to meet the needs of the Applicant's business.

20. In line with case law which discusses the difference between merely realising investments compared with realising an investment in the course of a business, TCO considered that the disposal of the interests in A was not a realisation made in the course of a business. The interests in A were long term investments held by the Applicant on capital account in which the Applicant derived dividend income. The disposal of the interests in A was a one-off event and the fact that the Applicant had not disposed of any of A's shares since the acquisition of the first tranche before 2010 also indicated the receipt was capital in nature.

21. Therefore, the transfer of the interests in A to B did not give rise to income of the Applicant under s CB 1.

22. TCO also considered whether income arose under ss CB 3, CB 4, or CB 5.

Section CB 3

23. An amount that a person makes in conducting an undertaking or scheme for the purpose of making a profit is income of the person under s CB 3. TCO concluded that an undertaking or scheme involves a programme of action devised in order to attain some end. The relevant purpose must be formulated at the time the property is acquired. For s CB 3 to apply, the acquisition and sale must exhibit features that give it the character of a business deal. If a receipt is capital in nature, it will not be income under s CB 3. As it had already been ascertained that the disposal of the interests in A will be on capital account, then no income to the Applicant arises under s CB 3.

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Section CB 4

24. Section CB 4 applies where a person disposes of personal property, and that property was acquired for the purpose of disposing of it. "Property" is something that is capable of being owned and being transferred. Shares in a company are capable of being owned and being transferred. "Personal property" in s CB 4 does not include land and the fact that shares are personal property is consistent with s 35 of the Companies Act 1993.

25. The test for determining a taxpayer's purpose in the context of s CB 4 is subjective, requiring consideration of the taxpayer's state of mind at the time of acquisition. For s CB 4 to apply, disposal must be the taxpayer's dominant purpose. The taxpayer's stated purpose is objectively assessed, and the length of time for which the property is held is of particular importance.[10]

26. The Applicant first acquired interests in A before 2010 and has not disposed of any shares since then. The Applicant's stated intention is to hold the interests in A long term and receive dividend income. The disposal only arises because of foreign jurisdiction regulatory purposes – otherwise the Applicant would continue to own the interests in A directly.

27. Accordingly, TCO considered that the interests in A were not acquired for the purpose of disposal and therefore did not give rise to income of the Applicant under s CB 4.

Section CB 5

28. Section CB 5 applies where a person is in the business of dealing in personal property. An amount derived by a person from disposing of personal property is income of the person if their business is dealing in property of that kind.

29. TCO concluded that while the Applicant may undertake some share buying and selling as part of its day-to-day business, and, therefore, could be a share dealer, the interests in A are held on capital account and do not form part of the business of the Applicant.

30. Therefore, the disposal of the interests in A would be outside the ordinary course of that business and do not give rise to income of the Applicant under s CB 5.

[10] *CIR v National Distributors Ltd* (1989) 11 NZTC 6,346 (CA).

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Overall Conclusion

31. TCO concluded that the transfer of the interests in A by the Applicant to B did not give rise to income of the Applicant under ss CA 1(2), CB 1, CB 3, CB 4, or CB 5.

Issue 2 | Take tuarua: Transfer of interests from B to the LPs

32. This issue concerned whether the Second Transfer gave rise to income of the Applicant.

33. In deciding this issue, TCO considered the following questions:

- Are the LPs tax transparent under the rule in s HG 2?
- Does the contribution of the interests in B, give rise to a disposal of the underlying assets held indirectly by the Applicant through B?
- What is the nature the underlying assets being disposed of?
- Does the income have a source in New Zealand?
- Is there a deduction for the cost of property?

Tax transparency

34. The tax transparency was relevant because if the LPs are tax transparent, the Applicant is treated as owning the interests in A under s HG 2 in its capacity as a partner of the LPs.

35. The arrangement stated that both B and the LPs will meet the definition of a "partnership" under s YA 1.

36. Therefore, both B and the LPs are tax transparent under s HG 2.

Disposal if partnership interest

37. The effect of s HG 2(1) is to treat the partnership as look through, with each partner being treated as holding the property of the partnership in proportion to their partnership share. It followed that where partners transfer their partnership interest to another person, they are treated as disposing of a share of the partnership property to the purchaser.

38. Therefore, if the Applicant disposed of its interests in B to the LPs, it would be treated as disposing of the underlying partnership property under s HG 2, being the interests in A.

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Meaning of dispose

39. TCO concluded that the s YA 1 definition of "dispose" did not assist for the Second Transfer, and it was necessary to consider the ordinary meaning of "dispose".

40. At the most fundamental level a disposition i.e., the action of disposing, involves complete alienation from the disposer of the thing being disposed of. That thing is "got rid of" - being no longer in the control, or possession of the disposer in any capacity.

41. TCO considered that there is a disposal of the interests in A by the Applicant under the Second Transfer for the following reasons:

- The Applicant is "getting rid of" its interests in B in exchange for limited partnership interests in each of the LPs. It has "disposed" of the interests in B.
- The Applicant will cease to be a partner of B. Under s HG 2(1)(b), the Applicant will no longer hold the property of B (being the interests in A) in the capacity as a partner of B. Therefore, the Applicant has disposed of the interests in A.
- Each of the LPs, as the new partners of B, will be treated as holding the property of B (being the interests in A) under s HG 2(1)(b).
- Concurrently, the Applicant becomes a partner of the LPs, and will be treated as holding the property of the LPs (being the interests in A) under s HG 2(1)(b).
- Overall, the Applicant (as a partner of B) will dispose of the interests in A to itself (as a partner of the LPs).
- The Applicant does not have the same legal rights in respect of the interests in A after the Second Transfer, because it is no longer a partner of B. It has a different set of legal rights in its capacity as a partner of the LPs – despite it continuing to be treated as holding the same proportion of ownership in A for tax purposes.

Can a person hold property in different capacities?

42. The question is whether, under the Act, a disposal could arise from a transfer of partnership property where s HG 2(1) treats the person as holding the property before and after the transfer. That is, the transferor and the transferee are treated as the owner under s HG 2(1).

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43. Under s HG 2(1)(b), partnership property is treated as being held by the partners in proportion to their interest in the partnership for the purpose of determining the partners' income tax liability "in their capacity as partners" of the partnership.

44. The ordinary words of s HG 2 limit the application of s HG 2 to "their capacity as partners". Therefore, if the Applicant is a partner of two different partnerships, it owns the interests in A in different capacities under s HG 2, and s HG 2 does not prevent a disposal from one capacity to another.

45. TCO noted that the different capacities approach is consistent with QB 17/09.[11] Although QB 17/09 discusses s HG 2 in the context of a transfer of property from a personal capacity to a partnership capacity, the same principle applies if the person is transferring property from one partnership capacity to another (because in both cases the person is the owner of the property for tax purposes before and after the transfer).

46. Although s HG 2(1) prescribes a look through treatment for partnership property, there is a distinction between a partner's capacity as a partner of the partnership and their other capacities, be it their personal capacity or, if relevant, their capacity as a partner in another partnership.

Conclusion on "disposal"

47. TCO concluded that the Applicant does not have the same legal rights in respect of the interests in A after the Second Transfer, because it is no longer a partner of B. It has a different set of legal rights in its capacity as a partner of the LPs – despite the Applicant remaining the owner of the interests in A for tax purposes.

48. The Applicant (as a partner of B) will dispose the interests in A to itself (as a partner of the LPs) under the Second Transfer.

Does s CB 4 apply to the Second Transfer?

49. Section CB 4 applies to personal property acquired for the purpose of disposal. The following factors must be present in order for s CB 4 to apply:
    - there is an "amount";
    - the amount is derived from disposing of "personal property"; and
    - the person acquired the relevant personal property for the purpose of disposal.

[11] QB 17/09 – Is there a full or partial disposal when an asset is contributed to a partnership as a capital contribution [15] *Tax Information Bulletin* Vol 30, No 1 (February 2018).

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Is there an amount?

50. TCO concluded that the Applicant derived an amount from the Second Transfer based on the following reasoning:

- Before the Second Transfer, the LPs did not own any assets, and they had no value.
- On the Second Transfer, the Applicant will contribute its interests in B to the LPs.
- It followed that the value of the interests in the LPs will equal the interests in B (as the LPs will have no other assets). This was similar to a company issuing shares to a person in consideration for the person transferring assets into the company. The issue price of the shares is equal to the assets contributed.
- The value of the interests in B and the interests in the LPs will equal the interests in A, as they are the underlying assets of B and the LPs.
- As the interests in A consist of shares, the interests in the LPs are capable to being valued and convertible in money.
- The Applicant will receive "money's worth" (being the increase in value of the interests in the LPs due to the underlying interests in A) in consideration of making the capital contribution to the LPs.
- The Applicant will derive "an amount" from disposing of its interests in B equal to the value of the interests in A under s CB 4.

Are the interests in B "personal property"?

51. The interests in A consist of shares. The definition of personal property in s CB 4 does not include land.

52. "Property" is something that is capable of being owned and being transferred.

53. Shares in a company are considered to be "property" as they are capable of being owned and being transferred. As shares in a company are clearly not land or interests in land, they should also be considered "personal property". This is consistent with the legal nature of shares under section 35 the Companies Act 1993.

54. Therefore, the interests in A are "personal property".

Purpose

55. TCO considered that it was clear the Applicant will acquire its interests in B (and the underlying interests in A under s HG 2) for the purpose of disposal. This was because

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both the acquisition and the disposal of the partnership interests form part of a restructuring plan that occur concurrently. Under that plan, the Applicant will acquire the partnership interests and immediately contribute the interests into the LPs. The purpose of disposal was inherently evident in the plan.

56. In summary, TCO concluded the contribution of the Applicant's interests in B to the LPs will give rise to income of the Applicant under s CB 4. The Applicant will derive an amount equal to the value of the interests in A, for the disposal of personal property. The Applicant acquired the partnership interests for the purpose of disposal as it is planning to acquire the interests and immediately contribute them into the LPs. This means the interests in A are also acquired for the purpose of disposal.

Source of income

57. It needed to be determined whether the income received by the Applicant is non-residents' foreign-sourced income as defined in s BD 1(4). If so, it would not constitute assessable income of the Applicant under s BD 1(5). The Applicant is a non-resident, so it needed to be determined whether the income received is foreign-source amount under the source rules in s YD 4.

58. Under s YD 4(12), income derived from the disposal of property in New Zealand has a source in New Zealand. Shares are generally located where the share register is kept. A is a company registered in New Zealand and the share registry is required to be kept in New Zealand.

59. Therefore, TCO concluded that the income under s CB 4 from the Second Transfer will be treated as having a source in New Zealand under s YD 4(12).

Deduction for the cost of the interest in B

60. TCO considered whether a deduction arises under s DB 23 (revenue account property) for the Applicant when it disposes of the interests in B and derives s CB 4 income under the Second Transfer.

61. The requirements for a deduction under s DB 23 can be summarised as:

- there must be "expenditure incurred";
- as a "cost" for "revenue account property"; and
- the exclusions denying a deduction for portfolio investment income and life insurers do not apply.

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62. The disposal of the interests in B and the underlying interests in A meets the definition of "revenue account property" as it produces income under s CB 4.

63. The following is relevant to the concept of "expenditure":

- It can encompass money or money's worth.
- Something is money's worth when it is convertible into cash directly or indirectly.
- It must be something that is "handed over".

64. Therefore, the amount of expenditure incurred by the Applicant in acquiring the interests in B is the value of the interests in A at the time of the First Transfer. The interests in A comprise shares (which are all convertible into cash so are "money's worth").

65. The Applicant will incur the expenditure on the date it transfers the interests in A to B, as that is the date it gives up, or pays away, its direct ownership and acquires a partnership interest in A.

Cost

66. "Cost" is that which must be given to acquire something, or the price paid for a thing - the money or money's worth given up by someone to get something but can be considered in its commercial reality.

67. The Applicant has given up its direct ownership of the interests in A to obtain the interests in B. That is, it's "cost" and its expenditure.

Limitations and timing of deduction

68. Section DB 23 overrides the capital and private limitations in s DA 2(1) – (2). None of the other limitations in s DA 2(3) – (6) apply to deny the Applicant a deduction.

69. Under s EA 2 the deduction for revenue account property is generally allocated to the income year of disposal. None of the exceptions in s EA 2(1) apply, therefore the Applicant is allowed a deduction for the cost of the interests in B in the income year of disposal.

Net income or net loss

70. As the First and Second Transfers occur concurrently, the Applicant does not derive net income or net loss under s BC 4 from the Second Transfer, as its income and deduction are the same (being the value of the interests in A on that day).

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Conclusion

71. TCO concluded that:

- The transfer of the interests in B by the Applicant to the LPs gave rise to income of the Applicant under s CB 4, and assessable income of the Applicant under s BD 1(5), equal to the value of the interests in A on the day of the transfer.
- The Applicant is allowed a deduction equal to the value of the interests in A on the day it acquires the interests in B under s DB 23.
- The general limitations in ss DA 2(3), DA 2(4), DA 2(5) and DA 2(6) do not apply to deny the deduction.
- The deduction is allocated to the income year in which the Applicant disposes of the interests in A under s EA 2(2).
- The transfer of the interests in B by the Applicant to the LPs does not give rise to "net income" or "net loss" (as calculated under s BC 4) of the Applicant in the year of the transfer.

Issue 3 | Take tuatoru: Whether s BG 1 applies

72. Section BG 1(1) provides that a "tax avoidance arrangement" is void as against the Commissioner. The approach to s BG 1 was settled by the Supreme Court in *Ben Nevis Forestry Ventures Ltd v CIR* [2008] NZSC 115, [2009] 2 NZLR 289, which has been followed in subsequent judicial decisions.

73. TCO's approach in making this decision is consistent with Interpretation Statement: IS 23/01 Tax avoidance and the interpretation of the general anti-avoidance provisions sections BG 1 and GA 1 of the Income Tax Act 2007 (3 February 2023) (IS 23/01). IS 23/01 will not be replicated in this TDS but in summary the steps are as follows:

- Understanding the legal form of the arrangement. This involves identifying and understanding the steps and transactions that make up the arrangement, the commercial or private purposes of the arrangement and the arrangement's tax effects.
- Determining whether the arrangement has a tax avoidance purpose or effect. This involves:
    - Identifying and understanding Parliament's purpose for the specific provisions that are used or circumvented by the arrangement.

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   - Understanding the commercial and economic reality of the arrangement as a whole by using the factors identified by the courts.
   - Considering the implications of the preceding two steps and answering the ultimate question under the Parliamentary contemplation test: Does the arrangement, when viewed in a commercially and economically realistic way, make use of or circumvent the specific provisions in a manner consistent with Parliament's purpose?
- If the arrangement does have a tax avoidance purpose or effect, consider the merely incidental test.

74. Taking into account all of the relevant facts and circumstances (noting that as this is a summary it may not contain all the facts or assumptions relevant to the decision and, therefore, cannot be relied on) the TCO concluded as follows:

The arrangement

75. TCO considered that the arrangement for s BG 1 purposes is that:

- The Applicant will establish three limited partnerships (B and the 2 LPs) under the law of a foreign jurisdiction.
- The Applicant will hold 100% of the limited partnership interests in each of the three limited partnerships upon establishment.
- The general partner of the three limited partnerships will be D, an overseas company which is an indirect wholly owned subsidiary of the Applicant.
- The Applicant will transfer the interests in A to B, as a capital contribution to B.
- At the same time, the Applicant will transfer a 50% limited partnership interest in B to each of the LPs, as capital contributions to the LPs.

The commercial purposes of the arrangement

76. The Applicant states that the commercial or private purposes of the Arrangement are:

- The transactions are to comply with the regulatory requirements of an overseas country.
- Under the foreign jurisdiction it is not permitted to control or have a substantial investment in A. Currently, A is a non-permitted investment of the Applicant.
- However, the Applicant is permitted to indirectly own non-permitted investments under the Arrangement.

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The tax effects of the arrangement

77. TCO considered that the arrangement will give rise to the following tax effects:

    - The transfer of the interests in A by the Applicant to B, as a capital contribution to B, will be a capital transaction. Any gain on the transfer will be a non-taxable capital gain.
    - The transfer of the interests in B by the Applicant to each of the LPs gives rise to income of the Applicant under s CB 4, and assessable income of the Applicant under s BD 1(5), equal to the value of the interests in A on the day of the transfer.
    - The Applicant is allowed a deduction equal to the value of the interests in A on the day it acquires the interests in B under s DB 23.
    - The transfer of the interests in B by the Applicant to each of the LPs will not create net income or net loss under s BC 4. There is no gain to the Applicant because its income and deductions will be the same, as the Second Transfer occurs concurrently with the First Transfer.
    - For income tax purposes, the Applicant continues to hold the interests in A directly under s HG 2. The only difference after the two transfers is that there will be a step up in the cost base of the interests in A from that previously held by the Applicant. However, this is merely crystallising an unrealised non-taxable capital gain. In other words, no tax advantage is gained from the transfers.

Parliamentary contemplation

78. The above tax effects did not cause concerns from a s BG 1 perspective. This is because the legislation is working as intended, and there is no “tax avoidance” (as defined), because there is no avoidance, postponement, or reduction of a liability to tax.

79. Capital receipts are not normally brought into the tax net, unless specific provision is made under the Act (for example, in accordance with the financial arrangements rules or certain land taxing provisions).

80. Over the years, a number of tests have been developed by the courts to assist in distinguishing between income and capital receipts. The well-known metaphor likens

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income to fruit from the tree of capital assets.[12] Where a receipt is from the realisation of a capital asset, then the receipt is unlikely to be an income amount.[13]

81. Parliament's purpose demonstrated throughout the provisions of the Act reflects the above - i.e. that taxpayers are taxed on income but not on capital receipts (subject to statutory changes to the general rule). This is set out most clearly in s CB 1 which states that an amount that a person derives from a business is income of the person, but that this does not apply to an amount that is of a capital nature.

82. Where income does arise, then as intended by the Act, it is offset by an equal and offsetting deduction being revenue account property that is concurrently disposed of.

Conclusion

83. Accordingly, TCO considered the provisions of the Act were being used and had the effect that Parliament intended. The above analysis indicated that Parliament would consider that the Arrangement makes use of the relevant provisions in a manner that is consistent with Parliament's purpose for those provisions. Therefore, the Arrangement did not have a tax avoidance purpose or effect.

[12] *Eisner v Macomber* (1919) 252 U.S. 189

[13] *Californian Copper Syndicate v Harris* [1905] 5 TC 159.

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