Inland Revenue
Te Tari Taake

TECHNICAL DECISION SUMMARY > PRIVATE RULING

WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKATAUNGA TŪMATAITI

Restructuring a group of companies

Decision date | Rā o te Whakatau: 15 March 2024

Issue date | Rā Tuku: 10 October 2024

TDS 24/18

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Subjects | Kaupapa

The establishment of a limited partnership to hold the shares in a holding company. The long-form amalgamation of the holding company and one of its subsidiaries under Part 13 of the Companies Act 1993, with the subsidiary remaining as the amalgamated company. The distribution by the holding company of cash and shares in subsidiary companies on amalgamation as consideration for the cancellation of its shares.

Taxation laws | Ture take

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

Summary of facts | Whakarāpopoto o Meka

1. The arrangement was the restructure of a group of companies (the Group). The restructure included:
   - The establishment of a limited partnership (LP) to hold the shares in the Group's holding company (Hold Co).
   - The long-form amalgamation of Hold Co and one of its subsidiaries (Sub 1) under Part 13 of the Companies Act 1993 (CA 93), with Sub 1 remaining as the amalgamated company.
   - The distribution by Hold Co of cash and shares in subsidiary companies to the LP on amalgamation as consideration for the cancellation of its shares.
2. The shareholders of the Group decided to move from a holding company structure to a limited partnership structure. Hold Co had investments in a number of companies. Those shareholdings were long term investments. However, the shareholders of the Group wished to be able to access capital gains should any of the investment companies be sold or wound up. The shareholders considered this was not possible without the liquidation of Hold Co.

Issues | Take

3. The main issues considered in this ruling were:
   - Whether an amalgamation was a "liquidation" as defined in s YA 1.
   - What was the first step "on liquidation" for the purpose of s CD 26.

- On amalgamation of Sub 1 and Hold Co, whether the issue of Sub 1 shares to the LP was a dividend.
- Whether the s CD 26 exclusion applied to cash and shares distributed by Hold Co on amalgamation.
- Whether Sub 1's subscriptions amount at the time of the amalgamation under s CD 43(15) would be equal to Hold Co's available subscribed capital (ASC) at the time of amalgamation.
- Whether s BG 1 applied.
- Whether s GB 1 applied.

Decisions | Whakatau

4. TCO decided that:

- The removal of Hold Co from the NZ register of companies under the CA 93 on amalgamation of Hold Co and Sub 1, was a "liquidation" as defined in s YA 1.
- For the purposes of s CD 26, the first step "on liquidation" of Hold Co was the date the shareholders resolved to accept the proposal to amalgamate Hold Co and Sub 1.
- On amalgamation of Hold Co and Sub 1, the issue of Sub 1 shares to LP was not a distribution of Sub 1 shares by Hold Co or dividend paid by Sub 1 to LP under s CD 4.
- Under s CD 26, the cash and shares paid in relation to each Hold Co share on amalgamation was not a dividend provided that the amount distributed did not exceed:
  - the "available subscribed capital" per share calculated under the "ordering rule" (as those terms are respectively defined in s YA 1); and
  - the "available capital distribution amount" (as defined in s YA 1) for that share calculated under s CD 44.
- Sub 1's subscription amount at the time of the amalgamation under s CD 43(15) was equal to the amount of ASC of Hold Co at the time of amalgamation.
- Section BG 1 did not apply.
- Section GB 1 did not apply.

Reasons for decisions | Pūnga o ngā whakatau

Issue 1 | Take tuatahi: Whether an amalgamation was a "liquidation" as defined in s YA 1

5. The issue was whether the amalgamation of Hold Co and Sub 1 was a "liquidation" as defined in s YA 1. This issue was relevant as s CD 26 contains an exclusion from the dividend rules for amounts paid to a shareholder on the liquidation of a company.

Section YA 1 definition of "liquidation"

6. The Tax Counsel Office (TCO) considered that the definition of "liquidation" in s YA 1, paragraph (a), was not exhaustive and it simply referred to the fact that a liquidation included:

   - removal of the company from the register of companies under the CA 93, and
   - termination of the company's existence under any other procedure of NZ or foreign law.

7. In TCO's view, it was not necessary to meet the requirements of both subparagraphs (i) and (ii) of paragraph (a) of the definition of "liquidation". Accordingly, TCO concluded the amalgamation of Hold Co and Sub 1 would result in the "liquidation" of Hold Co (as defined in s YA 1) if Hold Co were removed from the register of companies.

Removal of a company from the register of companies

8. Part 13 of the CA 93 deals with company amalgamations. Sections 225(a) and (c) provide that the amalgamation is effective on the date shown in the certificate of amalgamation and the Registrar must remove the amalgamating company from the NZ register.

9. Part 17 of the CA 93 deals with the removal of companies from the NZ register. Section 318 of the CA 93 sets out the grounds for removal from the register. In particular, s 318(1)(a) provides that the Registrar must remove a company from the NZ register if the company is an amalgamating company, other than the amalgamated company.

10. TCO considered that the removal of a company from the register of companies pursuant to ss 225(c) and 318(1)(a) of the CA 93 would be a "liquidation" as defined in s YA 1.

Conclusion

11. Accordingly, TCO concluded the removal of Hold Co from the NZ register of companies on amalgamation of Hold Co and Sub 1, was a "liquidation" as defined in s YA 1, being the "removal of the company from the register of companies under the Companies Act".

Issue 2 | Take tuarua: What was the first step "on liquidation" for the purpose of s CD 26?

12. The issue was whether, for the purposes of s CD 26, the first step "on liquidation" of Hold Co would be the date the shareholders resolved to accept the proposal to amalgamate Hold Co and Sub 1.

13. TCO had already concluded that the amalgamation fell within paragraph (a)(i) of the s YA 1 definition of "liquidation". The second part of the definition of "liquidation" described when the period of "liquidation" would begin for tax purposes. Among other things, this was important because the Act allowed a company to make tax-free distributions of capital gains to its shareholders "on liquidation" under s CD 26.

14. Paragraph (b)(i) of the s YA 1 definition of "liquidation" states that liquidation includes (in references in this Act to anything occurring on liquidation) anything occurring:

    - during the period that starts with a step that is legally necessary to achieve liquidation, including the appointment of a liquidator or a request of the kind referred to in section 318(1)(d) of the CA 93, and
    - for the purpose of enabling liquidation.

15. In TCO's view, the definition in s YA 1(b) was an inclusive rather than an exhaustive definition of "anything occurring on liquidation".

16. In the circumstances of this case, TCO considered that the first step "on liquidation" of Hold Co was the date the shareholders resolved to accept the proposal to amalgamate Hold Co and Sub 1.

17. There were two potential views on what was the first step legally necessary to achieve a long-form amalgamation:

    - A possible view was that the first step legally necessary to achieve a long-form amalgamation was the board of each amalgamating company resolving under s 221(1) of the CA 93 that in its opinion the amalgamation was in the best interest of the company, and it was satisfied on reasonable grounds that the amalgamated

company would, immediately after the amalgamation became effective, satisfy the solvency test.

- An alternate view was that the first step legally necessary was the approval referred to in s 221(5) of the CA 93 by:
  - the shareholders of each amalgamating company, under s 106, and
  - if a provision in the amalgamation proposal would, if contained in an amendment to an amalgamating company's constitution or otherwise proposed in relation to that company, require the approval of an interest group, by a special resolution of that interest group.

18. Arguably the step contained in the first possible view was preparatory and did not achieve amalgamation. The fact that the board of directors have passed the resolution referred to in s 221(1) and signed the certificate referred to in s 221(2) of the CA 93, did not guarantee that the amalgamation would commence/proceed as the necessary resolutions referred to in s 221(5) may not actually pass.

19. TCO considered the alternative view was more likely to be the first step legally necessary to achieve a long-form amalgamation. In terms of the sequence of events described in s 221 of the CA 93, the approval referred to in s 221(5)) necessarily occurred after the resolution by the board of each amalgamating company under s 221(1). Further, the shareholder resolution to accept the amalgamation proposal was made to achieve the amalgamation and not for any other purpose.

20. Accordingly, TCO concluded that, for the purposes of section CD 26, the first step "on liquidation" of Hold Co would be the date the shareholders resolved to accept the proposal to amalgamate Hold Co and Sub 1.

Issue 3 | Take tuatoru: Whether the issue of Sub 1 shares to the LP was a dividend

21. The issue was whether the issue of Sub 1 shares to the LP was either:

- a distribution of Sub 1 shares by Hold Co; or
- a dividend paid by Sub 1 to LP

22. Sections CD 4 to CD 6 are relevant in determining whether a dividend has been paid under the arrangement. TCO considered the following in its analysis:

- how the shares in the amalgamating companies were treated on amalgamation under the CA 93,

- whether a transfer of value had taken place,
- if a transfer of value was found to have occurred, whether it was caused by a shareholding in the company, and
- whether any of the exclusions in ss CD 22 to CD 37 or variations under the amalgamation rules would apply to the transfer.

Company law – treatment of new Sub 1 shares issued to LP

23. The Taxpayer advised that under the amalgamation, the Sub 1 shares that Hold Co held would be cancelled without consideration under s 220(3) of the CA 93 and new shares would be issued by Sub 1 to LP under s 41 of the CA 93.

24. TCO was satisfied that this appeared to be consistent with s 220(3) of the CA 93 which required the cancellation of shares which an amalgamating company (Hold Co) held in another amalgamating company (Sub 1), without payment or the provision of other consideration.

Transfer of company value

25. Section CD 4(1) provides that a transfer of company value to a person is a dividend if the cause of the transfer is a shareholding in the company. "Transfer of company value" is defined in s CD 5 as occurring when:

- a company provides money or money's worth to a person, and
- if the person provides any money or money's worth to the company under the same arrangement, the market value of the what the company provides is more than the market value of what the person provides.

26. In TCO's view, case law indicated that the expression "money or money's worth" required that a benefit be in money or be convertible into money, either directly or indirectly.[1] A benefit would be directly convertible into money where the benefit could be exchanged for a monetary equivalent.[2] For example, shares that were capable of being sold for money would be money's worth.

[1] *Tennant v Smith* (1892) 3 TC 158 (HL), *Stagg v CIR* [1959] NZLR 1,252 (HC), *Abbott v Philbin (Inspector of Taxes)* [1960] 2 All ER 763 (HL), *Heaton (Inspector of Taxes) v Bell* [1969] 2 All ER 70 (HL) and *Dawson v CIR* (1978) 3 NZTC 61,252 (SC).

[2] *Dawson* at 61,257.

27. TCO considered Sub 1's new shares would be money's worth. The next step was to determine whether money's worth was provided to LP by either Hold Co or Sub 1.

Was money's worth provided to LP (s CD 5(1)(a))?

28. As Hold Co's shares in Sub 1 were cancelled on amalgamation pursuant to s 220(3) of the CA 93, TCO accepted that factually Hold Co had not provided money's worth in the form of Sub 1 shares to LP. It followed that the issue of new Sub 1 shares was not a transfer of value from Hold Co to LP.

29. The cases reviewed by TCO suggested that an issue of shares involved something leaving the company and being provided to the shareholder. Accordingly, TCO concluded that by issuing shares, Sub 1 was providing money's worth to LP.

Did LP provide money or money's worth (s CD 4(1)(b))?

30. The Taxpayer submitted the issue of shares was not a transfer of value from Sub 1 to LP because it compensated LP for the cancellation of shares in Hold Co. The Taxpayer submitted that s 220(1)(f) and (g) of the CA 93 referred to the process as a conversion of shares. That is, a conversion of LP's shares in Hold Co to shares in Sub 1.

31. However, it was not clear to TCO how the conversion resulted in LP providing money's worth to Sub 1. That is, whether by agreeing to the amalgamation proposal, LP as shareholder of Hold Co has provided Sub 1 with money's worth. Further, TCO considered that under s CD 5(2B), the value of the cancelled Hold Co shares would be zero. Therefore, LP would not be treated as having provided any money or money's worth to Sub 1.

32. Accordingly, TCO considered that the issue of shares by Sub 1 was a transfer of company value from Sub 1 to LP under s CD 5. It followed that the issue of shares would be a dividend if the transfer of company value were caused by a shareholding relationship and none of the dividend exclusion provisions applied.

Was the transfer caused by a shareholding relationship?

33. Section CD 6 provides a transfer of company value will be caused by a shareholding if the recipient holds shares in the company or is associated with a shareholder, and the company makes the transfer because of that shareholding. In this case, the recipient (being LP) did not hold shares in Sub 1 prior to the issue of new shares.

34. Therefore, the issue was whether LP was associated with a shareholder of Sub 1 at the time of the transfer of company value (being the issue of shares).

35. On the basis that Hold Co's shares in Sub 1 would be cancelled, at the time Sub 1's shares were issued, LP would not be associated with a shareholder of Sub 1. Therefore, the transfer of value would not be caused by an existing shareholding in Sub 1.

Conclusion

36. TCO concluded that as the transfer of company value (the issue of new shares) by Sub 1 was not caused by a shareholding relationship, the issue of new shares by Sub 1 was not a dividend under s CD 4. As such, TCO did not need to consider whether any of the dividend exclusions contained in ss CD 22 to CD 37 applied.

Issue 4 | Take tuawhā: Whether s CD 26 exclusion applies to cash and shares distributed by Hold Co?

37. Hold Co held investments in a few companies and the issue was how s CD 26 dividend exclusion applied to the cash and shares distributed by Hold Co on amalgamation.

38. Section CD 26 applied when a shareholder was paid an amount in relation to a share on the liquidation of the company. The amount paid was a dividend only to the extent to which it was more than:

- the available subscribed capital (ASC) per share calculated under the ordering rule; and
- the available capital distribution amount (ACDA) calculated under s CD 44.

39. As noted above, TCO concluded that the removal of Hold Co from the NZ register of companies under the CA 93 on amalgamation of Hold Co and Sub 1, was a "liquidation" as defined in s YA 1.

40. Given that s CD 26 applied when a shareholder was paid an amount in relation to a share "on the liquidation" of the company, TCO's conclusion above meant that, on the face of it, s CD 26 applied to the distributions that would be made to Hold Co's shareholders on its amalgamation with Sub 1. Under s CD 26 those distributions would not be a dividend in the hands of Hold Co's shareholders to the extent of:

- the ASC per share calculated under the ordering rule; and
- the ACDA calculated under s CD 44.

Issue 5 | Take tuarima: Whether Sub 1's subscriptions amount under s CD 43(15) would be equal to Hold Co's ASC at the time of amalgamation

41. As noted above, a company's ASC represents the amount that could be returned to the shareholders free of tax when shares were repurchased (provided certain requirements and a bright line test are met) or the company was liquidated. ASC was calculated for a share in a company at any relevant time (as defined in s CD 43(2)).

42. The ASC was calculated using the formula:

    1 July 1994 balance + subscriptions – returns – look-through company returns

43. All the terms in the formulawere defined, but of relevance to this arrangement was the definition of "subscriptions". "Subscriptions" was defined as:

    subject to subsections (6) to (21), is the total amount of consideration that the company received, after 30 June 1994 and before the calculation time, for the issue of shares of the same class (the **class**) as the share, ignoring section HB 1 (Look-through companies are transparent), and including consideration for the issue of shares by the company as a result of the application of section CE 6 (Trusts are nominees)

44. Section CD 43(15) was relevant when calculating the total "subscriptions" amount for an amalgamated company. However, a taxpayer's "subscriptions" amount as determined under s CD 43(15) may not be the taxpayer's total subscriptions amount as defined in s CD 43(2)(b).

Section CD 43(15) "subscriptions amount" for an amalgamated company

45. The "subscriptions" amount in the ASC formula consisted of the consideration received for shares issued, under the definition of "subscriptions" in s CD 43(2)(b). Section CD 43(15) added an additional amount to the "subscriptions" amount of an amalgamated company.

46. Section CD 43(15) provided that the "subscriptions" amount of an amalgamated company included an amount equal to the ASC of all shares in the amalgamating companies except:

    - shares in the amalgamating companies that were held (directly or indirectly) by another amalgamating company (s CD 43(15)(a)(ii)); and
    - shares in the amalgamated company (s CD 43(15)(a)(iii)).

47. As Hold Co was the parent of Sub 1, s CD 43(15)(a)(ii) applied. The effect was that Sub 1's (an amalgamating company where the shares were held by another amalgamating company) ASC was not double counted as it was already included in the subscriptions amount in s CD 43(2)(b). Therefore, assuming the shares in the other amalgamating companies (Hold

Co) were of an equivalent class to the Sub 1 shares, s CD 43(15) provided that the subscriptions amount for Sub 1 was uplifted by an amount equal to the ASC of Hold Co at the time of amalgamation.

Conclusion

48. TCO concluded that Sub 1's subscription amount at the time of the amalgamation under s CD 43(15) would be equal to an amount the equivalent of the ASC of Hold Co at the time of amalgamation.

Issue 6 | Take tuaono: Whether s BG 1 applied

49. Section BG 1(1) provides that a "tax avoidance arrangement" is void as against the Commissioner. Section GA 1 enables the Commissioner to make an adjustment to counteract a tax advantage obtained from or under a tax avoidance arrangement.

50. The Supreme Court in *Ben Nevis* considered it desirable to settle the approach to applying s BG 1.[3] This approach is referred to as the Parliamentary contemplation test, which is an intensely fact-based inquiry. *Ben Nevis* has been followed in subsequent judicial decisions.

51. 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.
    - Understanding the commercial and economic reality of the arrangement as a whole by using the factors identified by the courts. Artificiality and contrivance are significant factors.

[3] *Ben Nevis Forestry Ventures Ltd v CIR* [2008] NZSC 115, [2009] 2 NZLR 289.

- Considering the implications of the preceding 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 has a tax avoidance purpose or effect that is not the sole purpose or effect of the arrangement, consider the merely incidental test. The merely incidental test considers many of the same matters that are considered under the Parliamentary contemplation test.

52. 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.

Application to the facts – brief overall summary

53. The Arrangement was the steps by which:

- the shareholders of Hold Co would contribute their shares in Hold Co to LP in exchange for an interest in LP; and
- Hold Co and Sub 1 would undertake a long-form amalgamation with Sub 1 surviving as the amalgamated company.

54. The relevant tax effects from the Arrangement were:

- The issue of Sub 1 shares to LP was not a distribution of Sub 1 shares by Hold Co, or a dividend distributed by Sub 1 to LP under section CD 4.
- On amalgamation Hold Co would distribute to LP its capital gains and shares in its subsidiaries. As an amalgamation fell within the s YA 1 definition of "liquidation", s CD 26 would apply to the distribution.
- Sub 1's ASC amount on the amalgamation would be equal to the ASC of Hold Co on amalgamation.
- LP was a transparent entity for income tax purposes and any income, expenditure and capital gains / losses were allocated to the limited partners in accordance with their interest in LP.

55. TCO noted that Parliament expected that net transfers of value from a company to its shareholders (or those associated with its shareholders) because of the shareholding relationship should be treated as a dividend. There were a limited number of exceptions and restrictions relating to dividends that show Parliament's concern that arrangements could

be entered into to recharacterise revenue gains as capital gains and artificially remove the capital gains without genuinely deriving the capital gain or in substance liquidating the company.

56. Following an extensive review of the Taxpayer's submissions, in TCO's view the arrangement did not use the Act in a manner that was contrary to Parliament's purpose for the dividend and liquidation provisions.

57. The commercial reasons for the restructure provided by the Taxpayer were somewhat general in nature. However, TCO considered Parliament's purpose did not appear to have been circumvented.

58. TCO noted the arrangement did not involve a third party and was entirely internally generated. However, TCO considered that the arrangement, when viewed in a commercially and economically realistic way, made use of the liquidation and amalgamation provisions in a manner that was consistent with Parliament's purpose. TCO based its view on the following:

- Capital gains can be transferred tax free on the liquidation of a company. Parliament has enacted several provisions with the aim of preventing taxpayers from artificially recharacterising retained earnings as capital gains. However, as the arrangement did not result in any uplift in Sub 1's ASC, the arrangement did not appear to provide an advantage and allow for the artificial recharacterisation of retained earnings in the future.
- The use of a limited partnership as a holding entity in a group structure was not in itself inconsistent with Parliament's intention. The establishment of LP and timing of the restructure appears to some extent driven by a need to overcome a tax issue and not any specific commercial or external activities. The tax issue related to a specific provision (the share for share exchange) that was targeted at preventing companies artificially increasing their ASC. When looking at the arrangement as a whole, the share for share exchange provision had not, in TCO's view, been circumvented as there had not been an ASC uplift.
- A taxpayer could choose how to undertake a transaction, but the use of the tax provisions must be within what Parliament would have contemplated. An amalgamation was treated as a liquidation for tax purposes. TCO considered it unlikely that Parliament would have intended that applying the amalgamation and liquidation rules would have the effect of circumventing the ASC limitation on share for share exchanges. However, due to the ASC limitation under s CD 43(15), the amalgamation had not resulted in an increase in Sub 1's ASC. It followed that the ASC limitation on share for share exchanges had not been circumvented.

59. The above analysis indicated that it was likely that Parliament would consider that the arrangement made use of the relevant provisions in a manner that was consistent with Parliament's purpose for those provisions. Therefore, TCO considered the arrangement did not have a tax avoidance purpose or effect.

60. As TCO concluded that there was no tax avoidance purpose or effect of this arrangement, it was not necessary to go on to consider whether the arrangement was a "tax avoidance arrangement". Accordingly, TCO concluded that s BG 1 did not apply to the arrangement. It was therefore not necessary to go on to consider the merely incidental test.

Conclusion

61. TCO concluded that s BG 1 would not apply to the arrangement.

Issue 7 | Take tuawhitu: Whether s GB 1 applied

62. Section GB 1 is a specific anti-avoidance rule relating to arrangements involving dividend stripping. The section counteracts tax avoidance arrangements where the vendor of shares in a company can convert future dividends receivable from the company, typically represented by accumulated profits, into a capital gain. The sale of the shares provides the vendor with a tax-free way to extract value from the company.

63. Section GB 1(1) specifies three requirements for the application of the provision:

- a disposal of shares;
- the disposal is part of a "tax avoidance arrangement";
- some or all of the consideration derived from the disposal is in substitution for a dividend.

64. If one (or more) of the three requirements specified in s GB 1(1) was not satisfied, s GB 1 would not apply.

Disposal part of a tax avoidance arrangement

65. In considering whether a "tax avoidance arrangement" existed for the purposes of s GB 1, TCO noted the following factors would be relevant to determining whether a transaction was within the contemplation of Parliament:

- Parliament expected that an amount would be treated as a dividend where shares were disposed of for a consideration which was in substitution for a dividend that the company would have otherwise paid.

- This was particularly the case where a company had significant retained earnings or an outstanding shareholder current account (although was not limited to these situations).
- Even where there were no retained earnings, there might still be future dividend avoidance. This could include situations where a company was expected to be profitable, and a structure was established to ensure that future profits were paid out as capital debt repayments.
- This was particularly the case where the ultimate holders of shares remained the same and were still enjoying the same economic benefits as before.

66. In TCO's view the arrangement considered for the purpose of s BG 1 was also the appropriate arrangement to consider when applying s GB 1.

67. TCO was of the view that the arrangement was not a "tax avoidance arrangement" for the purposes of s GB 1. In TCO's view, the arrangement did not exhibit any of the usual features that were of concern in the context of s GB 1, or the mischief that s GB 1 sought to address.

68. The arrangement involved forming a limited partnership, LP, as a holding vehicle and the removal of Hold Co from the Group structure.

69. Under the arrangement Hold Co's shareholders would continue to hold economic control over Sub 1. There was no debt back to Hold Co that could be used to extract capital debt repayments. The transaction had not been structured to convert dividends (yet to be) receivable from Sub 1 / Hold Co.

70. Based on the arrangement, the analysis in this Issue of this Summary and the s BG 1 analysis above, it was TCO's view that the arrangement was not a "tax avoidance arrangement". Accordingly, it was TCO's view that the requirement in s GB 1(1)(b) was not met.

71. Given that all three requirements in s GB 1(1) must be met for s GB 1 to apply, it was TCO's view that s GB 1 did not apply to the arrangement.

Conclusion

72. TCO concluded that s GB 1 did not apply to the arrangement.