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TAX INFORMATION

Bulletin

CONTENTS

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Ref	Draft type	Title	Comment deadline
2023-24 work programme	Public guidance work programme	Public advice and guidance work programme 2023-24	6 June 202

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IN SUMMARY

Case summaries

Technical decision summaries

LEGAL DECISION – CASE SUMMARIES

This section of the *TIB* sets out brief notes of recent tax decisions made by the Taxation Review Authority, the High Court, Court of Appeal, and the Supreme Court.

We've given full references to each case, including the citation details where it has already been reported. Details of the relevant Act and section will help you to quickly identify the legislation at issue. Short case summaries and keywords deliver the bare essentials for busy readers. The notes also outline the principal facts and grounds for the decision.

These case reviews do not set out Inland Revenue policy, nor do they represent our attitude to the decision. These are purely brief factual reviews of decisions for the general interest of our readers.

CSUM 24/03: TRA finds Notice of Claim defective so proceedings a nullity, alternatively Challenge deemed withdrawn

Decision date: 19 April 2024

Case

TRA 007/22 [2024] NZTRA 003

Legislative References

Tax Administration Act 1994, s120I

Taxation Review Authorities Regulations 1998, regs 7, 30(2) and 32

Legal terms

No jurisdiction, nullity, deemed withdrawn

Summary

The Taxation Review Authority (TRA) has no jurisdiction to hear a Challenge Proceeding regarding the imposition of use of money interest.

The Disputants failed to file a valid Notice of Claim concerning a second issue which had the potential to be within the TRA's jurisdiction. Accordingly, the Challenge Proceedings were defective (a nullity) with no evident path to rectification.

The Disputants failed to attend a mandatory directions hearing. There was no good reason for this and there were no exceptional circumstances. The result being the proceedings are at an end.

Impact

The outcome of this case confirms that a Notice of Claim must meet the requirements in the Taxation Review Authorities Regulations 1998 to commence proceedings, and failure to attend a directions hearing will bring the proceedings to an end unless there is a good reason or exceptional circumstances.

Facts

There were two tax issues that progressed through the disputes processes that precede Challenge Proceedings in the TRA. The Disputants (the Company, Mr X and Ms X) attempted to progress the two issues in one Challenge Proceeding.

The first dispute concerned the imposition of use of money interest (UOMI). The first adjudication report determined that the imposition of UOMI cannot be disputed.

The TRA received a "Notice of Claim" on 17 June 2022, and a document labelled "Statement of Claim" dated July 2022 (First Challenge). The Notice of Claim did not, on the face of it, appear to advance any matters over which the TRA had jurisdiction. The Disputants were notified of this.

The Commissioner filed a notice of appearance challenging the TRA's jurisdiction and applied to strike out the proceeding on the grounds the Disputants had not identified a "disputable decision", there was no reasonably arguable cause of action, and the claim was frivolous and vexatious. The Commissioner did accept there was a second dispute process in progress which could, later, raise issues with the TRA's jurisdiction. That second dispute was not advanced sufficiently though for the TRA to have jurisdiction at the time the application for strike out was made.

The second dispute, which was still in the disputes process at the time the First Challenge was filed with the TRA, commenced on 9 May 2022 when a Notice of Proposed Adjustment was issued. The Company made amendments to the PAYE returns for the months ended 31 August 2018 to 31 March 2019 to record PAYE deductions from additional amounts purportedly earned by Mr X and Ms X from the Company.

The Commissioner removed the additional amounts from the Company's PAYE returns for the months ended 31 August 2018 to 31 March 2019 and reassessed the Company's 2019 income tax return to include contracting income, reconstruct the Company's income and expenses resulting in an overall increase in its net profit, and removed the corresponding salaries and wages deduction. The Commissioner also applied the attribution rule to the contract income to Ms X and allowed a corresponding deduction for the Company.

The second adjudication report for the second dispute, upheld the Commissioner's positions and rejected the arguments the Company raised.

On 23 January 2023 the Disputants filed with the TRA a document described as a Notice of Claim. A directions hearing was to be held on 11 August 2023 however the Case Manager's three attempts to connect (by phone) the Disputants to the directions hearing were unsuccessful. Subsequently, the TRA received three emails from the Disputants. The first email indicated the Disputants would be available for the directions hearing. The second email requested that the directions hearing be rescheduled. The third email claimed that TRA hung up on the Disputants and went on to allege corruption on the part of the TRA and other parties.

The TRA sent the Disputants a Minute identifying the consequences of their non-attendance and how they could address that issue. The Disputants had until 20 October 2023 to provide a response.

On 18 December 2023 Mr X repeated the claims that the Case Manager hung up the telephone when Mr X had attempted to attend the directions hearing. Mr X accompanied that with threats that the Case Manager and the TRA would be prosecuted under the Crimes Act 1961. More recently Mr X has stated that Disputants propose bringing a private criminal prosecution against all Crown parties involved asserting dishonesty.

Issues

1. Whether the TRA has jurisdiction to hear a Challenge Proceeding regarding the imposition of UOMI;
2. Whether the document filed with the TRA on 23 January 2023 is a compliant Notice of Claim;
3. Whether the Disputant had good reasons for failing to attend the directions hearing or whether there are exceptional circumstances.

Decision

1. Whether the TRA has jurisdiction to hear a Challenge Proceeding regarding the imposition of UOMI

   The TRA found that the imposition of UOMI was entirely outside the scope of the TRA's jurisdiction. The TRA has no jurisdiction to hear Challenge Proceedings regarding UOMI as s 120I of the Tax Administration Act 1994 (TAA) prohibits a taxpayer challenging interest payable under pt 7 of the TAA.

2. Whether the document filed with the TRA on 23 January 2023 is a compliant Notice of Claim
   The TRA found that the document filed on 23 January 2023 (the document) is not a valid Notice of Claim as it did not include the essential requirements of:
   - Identifying one or more of the Commissioner's decisions; and
   - Grounds amounting to positions of fact and law to challenge the decision(s).

The TRA said that the document is a "narrative that fails to identify the material decisions by the Commissioner and respond to them with grounds on which the Disputants say the decisions are wrong." Furthermore, the Disputants did not demonstrate:

> ...a basis for thinking they have a reasonably arguable case to show any disputable decision made by the Commissioner was wrong. Accordingly, the Challenge Proceedings are defective, with no evident path to rectification.

The TRA found that the Disputants' documents show a dissatisfaction with the law that does, on its face, apply to them. That is not a justiciable issue.

The TRA found that the Disputants had failed to file a Notice of Claim in a form that commenced Challenge Proceedings before the TRA. Therefore, the processes before the TRA are a nullity.

3. Whether the Disputant had good reasons for failing to attend the directions hearing or there are exceptional circumstances. The TRA found that there was non-attendance by the Disputants at the directions hearing which is mandatory pursuant to reg 30(2) of the Taxation Review Authorities Regulations 1998 (the Regulations).

Where a disputant fails to attend a directions hearing the Challenge is deemed to be withdrawn and the disputant may only proceed with the consent of the TRA under reg 32 of the Regulations.

The TRA treated an email of 23 August 2023 as an application under reg 32 of the Regulations. The explanation given for failing to attend the directions hearing was rejected as being false. The TRA was involved in the directions hearing and delayed it to allow repeated attempts to contact Mr X.

The TRA was satisfied that there was no good reason for the Disputants failing to attend the directions hearing. Nor did the TRA find exceptional circumstances applied to justify allowing the Challenge to proceed.

CSUM 24/04: High Court allows the Commissioner's strike-out application, dismisses Mr McGuire's Judicial Review proceedings and awards indemnity costs to the Commissioner

Decision date: 22 April 2024

Case

***Commissioner of Inland Revenue v McGuire* [2024] NZHC 883**

Legislative References

High Court Rules 2016, r 15.1(1)(a), (b) and (d)

High Court Rules 2016, r 15.1(2)

Case Law References

Commissioner of Inland Revenue v McGuire [2022] NZDC 12179

Commissioner of Inland Revenue v McGuire [2023] NZHC 1314

Attorney General v Prince [1998] 1 NZLR 262 (CA) at 267

Commissioner of Inland Revenue v Michael Hill Finance (NZ) Ltd [2016] NZCA 276, [2016] 3 NZLR 303

Pharmacy Care Systems Ltd v Attorney-General (2001) 15 PRNZ 465 (CA)

Southern Ocean Trawlers Ltd v Director-General of Agriculture and Fisheries [1993] 2 NZLR 53 (CA)

Westpac Banking Corporation v Commissioner of Inland Revenue [2009] NZCA 24

Legal terms

Ultra Vires, beyond one's legal authority

Summary

On 12 July 2022, Judge S B Edwards struck out Jeremy McGuire's (Mr McGuire's) defence to the Commissioner of Inland Revenue's claim for $39,763.48 in unpaid tax, entered judgment in that amount and awarded costs.[1]

Mr McGuire filed a Judicial Review application claiming that Judge Edwards' judgment involved a miscarriage of justice due to various mistakes of fact, was unreasonable, was ultra vires and undermined by breaches of natural justice on the part of the Commissioner.

The Commissioner's applied to strike-out the Judicial Review proceeding while also seeking indemnity costs on the basis that Mr McGuire's claim disclosed no reasonably arguable cause of action, that Mr McGuire's legitimate expectations were met, and that the claim amounts to an abuse of Court process.

The High Court allowed the Commissioner's strike-out application as Mr McGuire's claim was so clearly untenable to the extent that it could not possibly succeed. The High Court could not substantiate Mr McGuire's alleged mistakes of fact/unreasonableness and the allegations of breaches of natural justice and legitimate expectation had no prospect of justifying the relief of setting aside Judge Edwards' judgment.

In finding that there was no reasonably arguable cause of action, it was not necessary for the High Court to determine the question of abuse of process. The Court granted the strike-out application and dismissed the proceedings except that Mr McGuire is to pay the Commissioner's reasonable costs.

1 *Commissioner of Inland Revenue v McGuire* [2022] NZDC 12179.

Impact

The decision reaffirms that pleadings must have a reasonably arguable cause of action to proceed and where the pleading is clearly untenable, all or part of that pleading may be struck-out.

Facts

On 2 March 2021, the Commissioner initiated proceedings in the Palmerston North District Court seeking judgment in respect of unpaid income tax and PAYE, including penalties and interest relating to a range of tax years and PAYE periods.

On 16 July 2022, Judge S B Edwards struck-out Jeremy McGuire's defence to the Commissioner of Inland Revenue's claim for $39,763.48 in unpaid tax, entered judgment in that amount and awarded costs.[2]

Judge Edwards judgment observed that Mr McGuire "denied he owed the Commissioner any tax and opposed the Commissioner's strike-out application on the grounds that the claims for arrears are disputed, are time-barred and have been settled".[3] And that, in maintaining he did not owe any tax arrears, he claimed a set off.

Judge Edwards proceeded to find that section 109(a) of the TAA operates to deprive the District Court of justification to hear and determine disputes over the correctness of assessment of tax or the amounts imposed for penalties and interest such as those which underpinned the Commissioner's claim. Therefore, Mr McGuire had no reasonably arguable defence.[4]

On 1 March 2023, the Commissioner initiated bankruptcy proceedings. Mr McGuire applied to the High Court for an order setting the bankruptcy notice aside but on 29 May 2023, his setting aside application was dismissed.[5] By application dated 13 June 2023, the Commissioner proceeded to apply for an order adjudicating Mr McGuire bankrupt.

Mr McGuire responded by filing the current proceeding, an amended statement of claim dated 17 August 2023, seeking judicial review of Judge Edwards' judgment of 16 July 2022.

Issues

Whether to grant the Commissioner's strike-out application of Mr McGuire's pleadings for Judicial Review by assessing whether Mr McGuire has a reasonably arguable cause of action.

Decision

The High Court struck out Mr McGuire's claim, finding that the claim had no reasonable cause of action in Judicial Review.

The High Court outlined that where a pleading discloses no reasonably arguable cause of action or case appropriate to the nature of the pleading, or is likely to cause prejudice or delay, or is otherwise an abuse of the process of the Court, the Court may strike out all or part of that pleading.[6] If the Court strikes out a statement of claim under the High Court Rules 2016, it may by the same order dismiss the proceeding.[7]

The High Court went onto observe and assess Mr McGuire's arguments under the claim.

The High Court considered that none of those alleged mistakes of facts could be substantiated. By the time the Commissioner's claim was pursued before Judge Edwards, it was limited to income tax-related debts arising from the 2012, 2013, 2015 and 2016 tax years and a $50 late filing penalty for Goods and Services Tax (GST). The amounts relating to the 2012 and 2013 tax years arose as a matter of self-assessment which were not amended or disputed by either party within applicable time limitations, and s 109(b) applied, deeming them to be accurate. Regarding 2016, Mr McGuire had filed a tax return for 2016 in a manner which he accepted he was unable to do so, and the Commissioner amended the 2016 assessment, accordingly, leaving no other part in dispute and in the absence of challenge under Part 8A of the TAA, s 109(b) deemed it to be accurate.

2 *Commissioner of Inland Revenue v McGuire*, above n 1, at [8]-[12].
3 At [13].
4 At [35].
5 *The Commissioner of Inland Revenue v McGuire* [2023] NZHC 1314.
6 High Court Rules 2016, r 15.1(a), (b) and (d).
7 Rule 15.1(2).

Considering the 2015 year, a dispute between the Commissioner and Mr McGuire arose and was the subject of administrative review by Inland Revenue's Disputes Review Unit (DRU) resulting in a claim in the Taxation Review Authority (TRA). A deed of settlement resulted from the TRA, and the issues for the 2015 tax year were fully and finally settled after Mr McGuire paid $1,000.00 in accordance with the deed of settlement.

Mr McGuire alleged unreasonableness and ultra vires decision-making on the same basis he alleged mistakes of fact.

The High Court stated that for the same reasons, they cannot substantiate those pleadings.

Mr McGuire claimed alleged breaches of natural justice on part of the Commissioner's procedure as he did not receive a legible colour-printed affidavit of up-to-date tax calculations and that the employees of the Commissioner failed to consult with Mr McGuire about content of the referral to DRU.

The High Court dismissed those allegations as they have no prospect of justifying the relief of setting aside Judge Edwards' judgment. The allegation regarding the procedure adopted during the DRU referral was described as "meritless and served only to waste the Court's time".

As the arguments were so untenable for a reasonable cause of action, it was not necessary to determine the question of abuse of process. However, notably, the Court mentioned that it did not overlook the fact that Mr McGuire pursued an appeal against Judge Edwards only once he was served with a bankruptcy notice on 1 March 2023.

The High Court considered it appropriate to award indemnity costs as the case was seen as broadly hopeless especially in relation to the claim of natural justice and legitimate expectations, which only served to achieve simple delay, rather than any prospect of success.

TECHNICAL DECISION SUMMARIES

Technical decision summaries (TDS) are summaries of technical decisions made by the Tax Counsel Office. As this is a summary of the original technical decision, it may not contain all the facts or assumptions relevant to that decision. A TDS is made available for information only and is not advice, guidance or a "Commissioner's official opinion" (as defined in s 3(1) of the Tax Administration Act 1994). **You cannot rely on this document as setting out the Commissioner's position more generally or in relation to your own circumstances or tax affairs**. It is not binding and provides you with no protection (including from underpaid tax, penalty or interest).

TDS 24/06: Sale of property and the bright-line test

Decision date | Rā o te Whakatau: 19 September 2023

Issue date | Rā Tuku: 11 April 2024

Subjects | Kaupapa

Income tax: sale of properties; bright-line test

Taxation laws | Ture tāke

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

Facts | Meka

1. This ruling concerns the future sale of three sections of residential land (the **land**) currently owned by the Applicant.
2. The land had previously been owned as follows:
   - One section (section one) was originally acquired by the Applicant, their spouse and another co-owner as tenants in common. The Applicant's share in this land had decreased and then increased progressively over the years. At the time of the Applicant's spouse's death, this section was owned by the Applicant and their spouse as 50:50 tenants in common.
   - One section (section two) was acquired by the Applicant and their spouse as 50:50 tenants in common and continued to be owned as such until the time of the Applicant's spouse's death.
   - One section (section three) was acquired by the Applicant and their spouse as joint tenants and continued to be owned as such until the time of the Applicant's spouse's death.
3. On the death of the Applicant's spouse, the Applicant inherited the half share in each of section one and section two that had been owned by their spouse, in accordance with the spouse's will, and section three was transmitted to the Applicant as the surviving joint tenant.

Issues | Take

4. The main issues considered in this ruling were:
   - Whether the bright-line tests potentially apply to future sale of the land (s CB 6A and CZ 39):
   - Whether the change affecting land/rezoning land provision would apply to the future dispositions of the land (s CB 14):
   - Whether a deduction (s DB 28) is available if s CB 14 applies.

Decisions | Whakatau

5. The Tax Counsel Office (TCO) concluded:
   - Sections CB 6A and CZ 39 will not apply to the future sale of the land.

- Section CB 14 will not apply to the future disposal of the land.
- It was not necessary to consider s DB 28 as it was not relevant since it was concluded that s CB 14 will not apply.

6. The following conditions were included:
   - The Applicant will sell the freehold estates in fee simple in each of the sections their entirety.
   - None of the land was "tax-base property" as defined in s FC 1(2).

Reasons for decisions | Pūnga o ngā whakatau

Issue 1 | Take tuatahi: Bright-line test

7. The bright-line tests in ss CB 6A and CZ 39 potentially apply to the disposal of residential land within a certain timeframe. The different bright-line tests and their application dates are discussed in [11].

Preliminary issue

8. A preliminary issue considered was the question of whether there were disposals of the Applicant's half share each of section one and section two when that land was transferred to the Applicant's sole ownership. This was considered as while in common law a person cannot dispose of property to oneself, s 56 of the Property Act 2007 says that a person may dispose of property to themselves.
9. TCO noted that the definition of "dispose" for the land sale rules in the ITA is not comprehensive. However, it referred to IS 22/03[1] which considers the meaning of "disposal"/ "dispose" in the land sale rules. IS 22/03 concludes that "disposal" in the land sale rules does not include transfers to self (in the same capacity).
10. Therefore, TCO concluded there were no disposals of shares in sections one and section two that the Applicant owned prior to the death of their spouse when those sections were transferred to the Applicant's sole ownership. These transactions therefore did not give rise to potential bright-line taxing events.

Bright-line tests application

11. Two bright-line tests potentially apply. The general application rules of the bright-line tests are:
    - The five-year bright-line period applies to residential land if the person first acquires an estate or interest in the land on or after 29 March 2018 (s CZ 39).
    - The 10-year bright-line period (or five-year period for new builds) applies to residential land if the person first acquires an estate or interest in the land on or after 27 March 2021 (s CB 6A).
12. If the residential land is disposed of within the applicable bright-line period, the amount received is treated as income.

When was an estate or interest in the land first acquired

13. Section CB 15B provides a general rule for when land is acquired. However, s CB 15B does not apply for the purposes of s CB 6A or s CZ 39.
14. Therefore, general principles as to when land is acquired apply to determine when a person first acquires an estate or interest in land. TCO referred to QB 17/02[2] which discusses when land is acquired in terms of the application provision for the old 2-year bright-line test. It states that in a typical land purchase, the purchaser will first acquire an interest in land when a binding contract to purchase the land is formed (even if some conditions still need to be met).
15. TCO concluded that the Applicant acquired an interest in all three pieces of land well before any of the bright-line application dates and on the face of it none of the bright-line tests would apply.
16. However, TCO also considered the question as to whether the Applicant's share in the land increasing progressively over the years means one of the bright-line tests could apply to a portion of any of the land.
17. The bright-line tests in ss CB 6A and CZ 39 state: "an amount that a person derives from disposing of residential land is income of the person …". It was therefore necessary to identify the residential land that is being disposed of and ascertain when the person disposing of the land first acquired an estate or interest in that land.
18. Were the Applicant to potentially be selling part-shares of any of the land (for example, selling a one third share to

1 IS 22/03: *Income tax – Application of the land sale rules to co-ownership changes and changes of trustees* (14 June 2022).

2 QB 17/02: *Income tax – Date of acquisition of land, and start date for 2-year bright-line test* (30 March 2017).

someone, then subsequently selling another third, etc) it would be necessary to identify when the particular share being sold at any time was acquired. TCO's view was a "first in first out" approach would likely be the most appropriate way to identify an acquisition date for any given share being sold. But when land is sold in its entirety, the application of the bright-line tests depends on when the person first acquired an interest in the land being sold (for example, the estate). A subsequent increase in the share of the estate a person holds was not relevant.

19. As the Applicant will be selling the properties in their entirety, TCO was of the view that none of the sales will be subject to tax under either of the bright-line tests, because the Applicant first acquired an interest in each estate before any of the bright-line test application dates.

Issue 2 | Take tuarua: Change affecting land

20. This issue concerned whether s CB 14 potentially applies to the future disposal of the land by the Applicant.
21. Under s CB 14, an amount a person derives from disposing of land will be income if:
    - it is not income under any of ss CB 6A to CB 12 or s CZ 39;
    - the person disposed of the land within 10 years of acquiring it;
    - the amount derived is more than the cost of the land;
    - at least 20% of the excess (the extent to which the amount derived exceeds the cost of the land) arises from one or more of the listed factors relating to the land; and
    - in the case of some of the listed factors, the factor occurred after the person acquired the land.
22. The relevant factor in relation to the three sections the Applicant will be selling is a change to the rules of an operative district plan under the Resource Management Act 1991.
23. TCO decided it could not consider the 20% threshold until after the sales are made and, in any event, whether the 20% threshold is met will be a factual matter that TCO may not be able to rule on (s 91E(4)(a) of the Tax Administration Act 1994).
24. However, TCO considered they may be able to be rule out s CB 14 applying to some or all of the land on the basis of the sales falling outside the 10-year period.

When land is acquired for the purposes of s CB 14

25. Section CB 14 refers to a person disposing of land "within 10 years of acquiring it".
26. The general rules in s CB 15B as to when a person acquires land for the purposes of subpart CB apply to s CB 14. It is the date that *begins a period* in which the person had an interest in the estate that will generally be the date of acquisition of the estate as a whole. As such, a person's share in an estate increasing over time would not generally mean there would be different acquisition dates for different shares in the estate (assuming the estate was disposed of in its entirety).
27. However, the general rule in s CB 15B(1) as to when land is acquired is overridden for some transactions by subparts FB and FC. These subparts provide for the timing of acquisition where there is transfer of property on a distribution by an executor in accordance with a will.
28. For the Applicant's half share of each of section one and section two, subparts FB and FC do not apply and TCO determined that the acquisition date for that share of the land was the date that an estate in the land was first acquired and this was outside the 10-year disposition period.
29. However, subparts FB and FC do apply to the one-half share of each of section one and section two the Applicant acquired via the executor of the Applicant's spouse's estate, in accordance with the spouse's will. As such, the general rule in s CB 15B(1) is overridden in terms of ascertaining the Applicant's date of acquisition of these half shares.
30. The transfer of the spouse's estate to the executor falls within s FC 1(1)(a), and the distribution from the executor of the estate to the Applicant falls within s FC 1(1)(b). As such, subpart FC applies to both of those transfers of the one half share the Applicant's spouse held in each of section one and section two before their death.
31. As the share the Applicant's spouse held was not tax-base property (defined (relevantly) as revenue account property), s FC 3 will apply, because:
    - the circumstances of the transfers to the executor and from the executor to the Applicant are as described in s FC 1(1)(a) and (b), respectively,
    - the Applicant was the deceased's surviving spouse.

32. Where FC 3 applies, the transfers to the executor and from the executor of the Applicant's spouse's estate to the Applicant are treated as transfers of property under a settlement of relationship property under subpart FB.
33. Section FB 3 applies for the purposes of various provisions including s CB 14. As such, by virtue of subsection (3), the executor is treated as having acquired the land the Applicant's spouse held before their death on the date it was acquired by the Applicant's spouse. The Applicant is then treated as having acquired the land on the date it was acquired by the executor, being the date it was acquired by the Applicant's spouse. In other words, by virtue of ss FB 3 and FC 3, the Applicant is treated as having acquired the half shares in each of section one and section two that they acquired via the executor on the date the Applicant's spouse first acquired an estate in the land.
34. The acquisition date for the half share in each of section one and section two that the Applicant's spouse held at the time of their death is ascertained under the general rule in s CB 15B (for the purposes of subpart CB other than bright-line).
35. Section CB 15B applies to the half shares in section one and section two that the Applicant's spouse held at the time of their death in the same way it applies to the Applicant's half shares. TCO determined that the acquisition date for the land was the date that an estate in the land was first acquired and this was outside the 10-year disposition period.
36. As such, the disposals of section one and section two will not be subject to s CB 14. This subject to the condition that neither of the sections were tax-base property.
37. Section three was held by the Applicant and their spouse as joint tenants. The Applicant became the sole owner of this section upon the spouse's death, by operation of survivorship. As such, subparts FB and FC are not relevant, so the general rule in s CB 15B is not overridden.
38. TCO determined that, under s CB 15B, the acquisition date for section three was the date that an estate in the land was first acquired and this was outside the 10-year disposition period.
39. As such, the disposal of section three will also not be subject to s CB 14.

Issue 3 | Take tuatoru: Deduction if s CB 14 applies

40. Section DB 28 applies when a person derives income under s CB 14 that is not income under any other provision. It provides that the person is allowed a deduction of 10% of the profit on the disposal for every year the land was owned (up to a maximum of $1,000).
41. As s DB 28 is relevant only if s CB 14 applies and TCO concluded s CB 14 will not apply to the disposal of any of the land, it was not necessary to consider or rule on s DB 28.

TDS 24/07: Suppressed cash sales, GST and evasion shortfall penalties

Decision date | Rā o te Whakatau: 22 November 2023

Issue date | Rā Tuku: 12 April 2024

Subjects | Kaupapa

Income tax: Suppressed income; GST: Input tax deductions, taxable activity; TAA: Shortfall penalties

Facts | Meka

1. The Taxpayer is a company that carried on a restaurant business. It was registered for income tax and GST.
2. Following an investigation, Customer Compliance Services, Inland Revenue (CCS), formed the view that:
   - The Taxpayer was involved in fraudulent activity through suppressing cash sales.
   - The Taxpayer had under-returned GST and income tax.
   - The Taxpayer ceased to carry on a taxable activity in later GST periods, as another company (Company B) took over the restaurant business.
3. CCS reassessed the Taxpayer's GST and income tax returns for the relevant periods, accounting for suppressed cash sales based on an analysis of the point of sale (POS) data, the Taxpayer's bank statements and an industry benchmark. CCS also issued a default assessment in respect of one income year. Evasion shortfall penalties of 150% were applied, reduced for previous behaviour by 50%.
4. For later GST periods, CCS assessed the Taxpayer's GST returns as nil, disallowing input tax deductions claimed.
5. The Taxpayer filed a Notice of Proposed Adjustment (NOPA) rejecting the Commissioner's reassessments and disputing CCS's default assessment.
6. The matter was referred to the Tax Counsel Office, Inland Revenue (TCO) for adjudication.

Issues | Take

7. The main issues in dispute were:
   - Did the Taxpayer under-report its cash sales and, if so, what is the amount of the under-reported cash sales?
   - Is the Taxpayer entitled to offset the cost of fresh produce purchased with cash against unreported cash sales where it does not hold records?
   - Has the Commissioner correctly reassessed GST for the later periods disallowing input tax deductions claimed?
   - Is the Taxpayer liable to pay a shortfall penalty for evasion?
8. There were also preliminary issues raised by the Taxpayer concerning:
   - Whether the Commissioner was entitled to issue assessments under s 89C(eb) of the Tax Administration Act 1994 (TAA).
   - Was the outcome of the investigation pre-determined?

Decisions | Whakatau

9. TCO decided that:
   - The Commissioner validly assessed the Taxpayer without issuing a NOPA.
   - The outcome of the investigation of the Taxpayer was not predetermined.
   - The Taxpayer under-reported its cash sales.
   - The Taxpayer was not entitled to offset the cost of fresh produce purchased with cash, as no supporting evidence was provided.
   - The Commissioner correctly assessed the Taxpayer's GST and income tax assessments for the disputed periods.

- For later GST periods, the Commissioner correctly reassessed the Taxpayer's GST disallowing input tax deductions claimed.
- Evasion penalties were correctly imposed for the GST and income tax shortfalls.

Reasons for decisions | Pūnga o ngā whakatau

10. All legislative references in relation to the preliminary issues are to the TAA.

Preliminary Issue 1 | Take tōmua tuatahi: Whether the assessments were valid

11. The Commissioner's decision to make assessments without issuing a NOPA cannot be disputed by the Taxpayer. Relying on s 89C(eb), the Commissioner formed the view that he had reasonable grounds to believe that the Taxpayer has been involved in fraudulent activity through suppressing sales and under-returning GST and income tax. A matter which s 89C(eb) leaves to the Commissioner's discretion is not a "disputable decision" and s 138E provides there is no right of challenge.
12. However, the Taxpayer can dispute the resulting assessments by issuing its own NOPA (s 89D). As such, the Taxpayer is not denied dispute rights and other issues may be considered and dealt with under the statutory disputes process.

Preliminary Issue 2 | Take tōmua tuarua: Whether the outcome of CCS's investigation was predetermined

13. The Taxpayer argued that the basis of CCS's assessments was prejudicially and constructively reached with the outcome of CCS's inquiries having been predetermined from the start of their investigation.
14. TCO considered the outcome of the investigation was not predetermined and the Taxpayer did not provide any evidence in support of this allegation. The approach the Commissioner took to obtaining and analysing the Taxpayer's bank statements and POS data was a genuine attempt to calculate the Taxpayer's GST, income tax and shortfall penalty liabilities fairly and impartially.
15. The Taxpayer has not provided any evidence that the Commissioner ignored any information that was available to him or declined to pursue relevant lines of enquiries open to him.
16. Even if there had been a breach of natural justice (and it is not considered there has been) the Taxpayer can dispute the validity of an assessment through the disputes and challenge procedures. In addition, if this dispute proceeds to challenge stage the Taxpayer will have another opportunity to be heard (in the Taxation Review Authority or a court, as the case may be) and for a decision to be made free from bias. Similarly, TCO's review is independent from CCS and considers the dispute afresh on the basis of the evidence submitted by the parties.

Issue 1 | Take tuatahi: Whether the Taxpayer under-reported cash sales

17. The Commissioner assessed the Taxpayer with additional cash sales in the relevant GST periods and income years, resulting in GST and income tax shortfalls.
18. The Taxpayer argued that the Commissioner had no basis for the assessments and that the maximum/sales revenue was lower than the amount the Commissioner assessed.

Onus and standard of proof

19. The onus of proof in civil proceedings is on the taxpayer, except for shortfall penalties for evasion or similar act, or obstruction. The taxpayer must prove that an assessment is wrong, why it is wrong, and by how much it is wrong.[1]
20. The standard of proof in civil proceedings is the balance of probabilities.[2] This standard is met if it is proved that a matter is "more likely than not".
21. An assessment made by the Commissioner cannot be arbitrary. He must make the best judgment he can on the information in his possession as to the amount of taxable income and the amount of tax payable. In some cases, a taxpayer may be able to discharge the onus of proof by showing that the assessment is arbitrary or demonstrably unfair.[3]

1 Section 149 of the TAA. Case law confirms this approach: *Case V17* (2002) 20 NZTC 10,192; *Accent Management Ltd v CIR* (2005) 22 NZTC 19,027 (HC); *Vinelight Nominees Ltd v CIR (No 2)* (2005) 22 NZTC 19,519 (HC).

2 *Yew v CIR (1984) 6 NZTC 61,710 (CA); Case Y3 (2007) 23 NZTC 13,028; Case X16 (2005) 22 NZTC 12,216.*

3 *Lowe v CIR* (1981) 5 NZTC 61,006 (CA) at 61,015; *CIR v Canterbury Frozen Meat Co Ltd* (1994) 16 NZTC 11,150.

Application

22. The Commissioner's methodology relied on the Taxpayer's bank statements and the Taxpayer's POS system data to determine as best he could with the information available, the amount of omitted income of the Taxpayer.
23. The Commissioner established that not all cash received from the restaurant business had been deposited into the Taxpayer's bank accounts. He made a reasonable assumption based on the available evidence that only the cash banked had been returned for GST purposes and that other cash takings recorded by the POS system had not been included in the returns. Using the information available to him, he recalculated the gross sales and determined the amount of omitted income in the Taxpayer's GST and income tax returns in the relevant periods.

Did the Taxpayer prove that the Commissioner's assessments were arbitrary or demonstrably unfair?

24. The Taxpayer asserted that CCS's assessments were demonstrably unfair, arguing that:
    - The benchmark comparison used to calculate the amount of cash sales was inaccurate for the business.
    - The amount of undeclared income could be nil.
    - Cash from the business was deposited sporadically because banking required travel to the nearest banking facility.
25. TCO concluded that the above arguments did not support the Taxpayer's position that the assessments were arbitrary or demonstrably unfair, noting that:
    - The industry benchmark did not affect CCS's assessments, as the assessments were based on the Taxpayer's own POS data.
    - It was not possible for CCS to be more precise about the suppressed cash sales as the Taxpayer did not maintain good records and did not provide most of the information requested by CCS.
    - Without further explanation or analysis by the Taxpayer, its reason for sporadic banking did not explain why the cash sales percentage used by the Commissioner was unfair.

Did the Taxpayer prove that the Commissioner's assessments were wrong?

26. The Taxpayer also argued that the Commissioner overestimated the maximum sales/revenue for a particular period, stating that the sales/revenue could not have exceeded the gross sales recorded by the restaurant's POS system.
27. However, the figure for the maximum sales/revenue that the Taxpayer provided related to a different period than the Commissioner's assessments, and the Commissioner's assessments did not exceed the gross sales recorded by the restaurant's POS system.
28. Following receipt of the Taxpayer's Statement of Position, CCS accepted the Taxpayer's arguments regarding cancelled sales and reduced the cash sales ratio and the assessments of income tax, GST and shortfall penalties accordingly.
29. TCO concluded that the Taxpayer had not established that CCS's assessments were wrong.

Issue 2 | Take tuarua: Offset for Cash Purchases of Fresh Produce

30. The Taxpayer argued that it was entitled to offset the cost of fresh produce purchased with cash against unreported cash sales where it did not hold records.
31. TCO considered whether the Taxpayer was entitled to claim input tax deductions under the Goods and Services Tax Act 1985 (GSTA) and deductions under the Income Tax Act 2007 (ITA) for the cash purchases.

GST input tax deduction

32. The calculation of GST payable by a registered person is set out in s 20 of the GSTA. In brief, the input tax that a registered person has paid when acquiring goods and services may be offset against the GST output tax charged on supplies made by the person in the same period (s 20(3) of the GSTA).
33. For a taxpayer to claim input tax, the applicable requirements must be met:
    - The taxpayer must be a GST registered person. Registration for GST is dependent on the person carrying on a taxable activity.
    - Goods or services must have been acquired. It is not enough that a payment to a registered person is identified, it must have sufficient connection to the supply of goods and services.
    - The goods and services must have been used for, or available for use in, making taxable supplies.
    - The taxpayer holds a tax invoice when they furnish the return.

Tax Invoice Requirements

34. TCO noted that the requirement to hold a tax invoice is an important and deliberate feature of the GSTA. The information provided by invoices is essential for the administration of the GSTA and helps a registered person to know whether they can claim an input tax deduction.
35. A tax invoice is not required for supplies made for a consideration of $50 or less (s 24(5) of the GSTA).

Application

36. TCO decided that the Taxpayer was not entitled to an input tax deduction because:
    - The Taxpayer had provided no basis for the value of fresh produce it acquired.
    - The Taxpayer's argument that its financial statements included little reference to purchases of fresh produce was not meaningful without further analysis and context.
    - The Taxpayer did not provide any tax invoices to support its claim for input tax deductions in relation to purchases of fresh produce with cash, and they did not claim that any of the purchases were less than $50.

Income tax deductions

37. Section DA 1 of the ITA sets out the general permission. To establish that a deduction for expenditure or loss is allowable under the general permission a taxpayer must show that:
    - they have incurred the expenditure or loss; and
    - there is a sufficient nexus or connection between the expenditure or loss and the derivation of income by the taxpayer, or the carrying on of a business for that purpose.
38. Determining whether there is a sufficient nexus or connection between expenditure and the derivation of income requires identifying the relationship between the advantage gained or sought to be gained by the expenditure and the income earning process. Whether a sufficient relationship exists is a question of fact.[4]
39. While a taxpayer's entitlement to an income tax deduction cannot be disallowed merely because no invoice is provided, s 22 of the TAA requires taxpayers who carry on an activity or business for the purpose of deriving assessable income to keep sufficient records.

Application

40. TCO concluded that the Taxpayer had not provided sufficient evidence to show that it incurred expenditure on fresh produce using cash for the value that it claimed. Therefore, it was not entitled to the income tax deduction.

Issue 3 | Take tuatoru: Taxable activity

41. In this issue, all legislative references are to the GSTA unless stated otherwise.
42. CCS reassessed the Taxpayer's GST returns as nil in several GST periods, having formed the view that Company B had taken over the Taxpayer's taxable activity.
43. The Taxpayer accepted that Company B became the new operating entity for the business for the relevant GST periods, but argued that the Taxpayer remained an active entity as:
    - It paid expenses incurred by it before the first relevant GST period.
    - It purchased materials and paid accounts for the establishment of Company B.
44. CCS argued that the Taxpayer no longer had a taxable activity from the GST period in which Company B took over the business, and that the Taxpayer could therefore no longer claim input tax. It also argued that:
    - The Taxpayer had not provided any documentation to support its input tax claims.
    - The Taxpayer could only claim expenses for goods and services bought for use in its own taxable activity.

Requirements for a taxable activity

45. GST is imposed on taxable supplies of goods and services made by a registered person in the course or furtherance of a taxable activity carried on by the registered person. Establishing that there is a taxable activity is crucial to whether a person should be registered for GST and subject to the GSTA.

4 *Cox v CIR* (1992) 14 NZTC 9,164 (HC) at 9,168; *CIR v Banks* (1978) 3 NZTC 61,236 at 61,240.

46. Taxable activity is defined in s 6 of the GSTA. There are four requirements that must be satisfied to show there is a taxable activity (s 6(1)(a)):
    - There must be an activity.[5]
    - The activity must be carried on continuously or regularly by a person.[6]
    - The activity must involve, or be intended to involve, the supply of goods and services to another person.[7]
    - The supply or intended supply must be made for a consideration.[8]
47. Anything done in connection with the beginning or ending, including a premature ending, of a taxable activity is treated as being carried out in the course or furtherance of the taxable activity (s 6(2)).

Application

48. For the following reasons, TCO decided that CCS had correctly reassessed the Taxpayer's GST returns in the relevant periods as nil:
    - The onus of proof is on the Taxpayer.
    - The Taxpayer has not shown that it continued to carry on a taxable activity after Company B took over its restaurant business.
    - It has not shown that the expenses incurred were something done in connection with the ending of its taxable activity and it has not provided any tax invoices or other supporting documentation.

Issue 4 | Take tuawhā: Shortfall penalties for evasion

49. In this issue, all legislative references are to the TAA unless stated otherwise.
50. Section 141E(1)(a) imposes a shortfall penalty for evasion on a taxpayer if the following requirements are satisfied:
    - The taxpayer has taken a tax position. A tax position is a position or approach to tax under a tax law as taken in or in respect of a tax return, income statement, or due date.
    - Taking the tax position has resulted in a tax shortfall. A tax shortfall is the difference between the tax effects of the correct tax position and the tax effects of the taxpayer's position.
    - The taxpayer has evaded the assessment or payment of tax. Evasion requires an intention to avoid the assessment or payment of tax known to be chargeable.[9]
        - The element of intention will be satisfied if the taxpayer knows that their action or omission will breach a tax obligation. There must be some blameworthy act or omission on the part of the taxpayer. The required intent for evasion can be inferred from surrounding circumstances and conduct.
        - Wilful blindness may be equivalent to actual knowledge. A finding of knowledge can be based on evidence that a taxpayer has deliberately shut their eyes to the obvious or refrained from inquiry because they did not want to have their suspicions confirmed.[10]
        - Recklessness can amount to evasion and involves the conscious taking of risk.[11] Recklessness will be proven where:[12]
            - Facts known to the taxpayer were such that they must have put the taxpayer on inquiry that a tax obligation may not be met, and
            - the taxpayer made a conscious decision to ignore the facts without making further inquiry.
        - In the case of a company, the knowledge of a responsible officer or officers of the company can be attributed to the company.[13]

5 *Newman v CIR* (1994) 16 NZTC 11,229 (HC) at 11,233; *CIR v Bayly* (1998) 18 NZTC 14,073 (CA) at 14,078; *Case 14/2016* at [63].

6 *Newman* (CA) at 12,100; *Smith v Anderson* (1880) 15 Ch D 277 at 278; *Premier Automatic Ticket Issues Ltd v FCT* (1933) 50 CLR 268 (HCA) at 298; *Case 14/2016* at [67];

7 Definition of "supply" in s 5(1); *Databank Systems Ltd v CIR* (1987) 9 NZTC 6,213 (HC) at 6,223; *Pacific Trawling Ltd v Chief Executive of the Ministry of Fisheries* (2005) 22 NZTC 19,204 (HC); *Case S77* (1996) 17 NZTC 7,483; *Case L67* (1989) 11 NZTC 1,391.

8 Definition of "consideration" in s 2(1).

9 *Taylor v Attorney-General* [1963] NZLR 261 (SC).

10 *R v Chahine-Badr* [2006] 2 CTC 243; 79 OR (3d) 671 and see also *Westminster City Council v Croyalgrange Ltd* [1986] 2 All ER 353, 359 (CA).

11 *Case N47* (1991) 13 NZTC 3,388 at 3,393; *R v Harney* [1987] 2 NZLR 576 (CA) at 579 and 581.

12 *Case P29* (1992) 14 NZTC 4,213.

13 *Meulen's Hair Stylists Ltd v CIR* [1963] NZLR 797 (SC).

51. The penalty payable for evasion or similar act is 150% of the resulting tax shortfall.
52. The onus of proof rests with the Commissioner to show that a taxpayer is liable for a shortfall penalty for evasion under s 141E (s 149A(2)(a)). This is different from the other shortfall penalties where the onus of proof is on the taxpayer. The standard of proof is the balance of probabilities (s 149A(1)).

Application

53. TCO concluded that the Taxpayer was liable for evasion shortfall penalties (reduced by 50% for previous behaviour) because the Commissioner has proven on the balance of probabilities that the Taxpayer evaded the assessment or payment of tax:
    - There was evidence that the Taxpayer's responsible officers knew that not all the restaurant's sales income was banked, yet they prepared the GST and income tax returns from the bank statements without any adjustment for unbanked sales income.
    - By not using the data from the Taxpayer's own POS system which would have provided a more accurate picture of the restaurant's total sales (even after being put on notice by Inland Revenue's investigation) the responsible officer who prepared the tax returns was being wilfully blind. Wilful blindness is equivalent to actual knowledge.

TDS 24/08: Employee Share Scheme – right to receive shares

Decision date | Rā o te Whakatau: 7 February 2024

Issue date | Rā Tuku: 30 April 2024

Subjects | Kaupapa

Income tax: Employee share scheme; share scheme taxing date

Taxation laws | Ture tāke

All legislative references are to the Income Tax Act 2007.

Facts | Meka

1. The Taxpayer was an employee of C Ltd (the Company). The Taxpayer was granted rights (Rights) to receive ordinary shares (Shares) in the Company under an employee share scheme (ESS) implemented by that company.
2. The Rights vested around 3 years after they were granted and, provided the Taxpayer was then an employee of the Company, they were entitled to receive a corresponding number of Shares and could exercise the Rights. The Taxpayer had until the end of the second fiscal year following the year in which the Rights vested to exercise the Rights.
3. The Rights granted to the Taxpayer vested in June 2020 and June 2021. The Taxpayer exercised all the Rights and sold all the Shares in April 2022.
4. The Company included the amount received from the sale of the Shares as employee share scheme (ESS) income derived by the Taxpayer in the employment information it filed with Inland Revenue for April 2022. This is consistent with the "share scheme taxing date" being in early April 2022 when the Taxpayer exercised the Rights.
5. The Taxpayer considered that the "share scheme taxing date" was when the Rights vested, and the employment information provided by the Company was incorrect. The taxpayer purported to amend their 2021 income tax return to include ESS income for the Rights that vested in June 2020 and in their 2022 income tax return included ESS income for the Rights that vested in June 2021.
6. Customer and Compliance Services, Inland Revenue (CCS) was on the view that the "share scheme taxing date" was in April 2022 when the Rights were exercised and proposed adjusting the Taxpayer's income tax returns to reflect this.
7. The Taxpayer disagreed and the matter was sent to the Tax Counsel Office, Inland Revenue (TCO) for adjudication.

Issues | Take

8. The main issue considered in this dispute was whether the "share scheme taxing date" was when the Rights vested or when the Taxpayer exercised the Rights.

Decisions | Whakatau

9. TCO decided that the "share scheme taxing date" was when the Rights vested.

Reasons for decisions | Pūnga o ngā whakatau

Issue 1 | Take tuatahi: "Share scheme taxing date"

10. Under s CE 1 the amount of a benefit received under an ESS by a person is income of the person.
11. The amount of the benefit is the value of the shares at the "share scheme taxing date" less the amount paid for them.
12. The "share scheme taxing date" is also relevant in determining the time at which the income is derived. The income is treated as derived on the 20th day after the "share scheme taxing date".

13. Under s CE 7B "share scheme taxing date" means, in relation to shares or related rights under an ESS, the earlier of the following two dates:
    - The first date when shares are held by or for the benefit of an employee "(beneficial ownership)" and after which there is no material risk that beneficial ownership may change, no benefit accruing to employee in relation to a fall in value in the shares, and no material risk of a change in the terms of the shares affecting their value.
    - The date the employee's shares or related rights are cancelled or are transferred to a person who is not associated with the employee.
14. It was undisputed there was no material risk that beneficial ownership of the Shares may change or that any right or requirement in relation to the transfer or cancellation of the Shares may have operated. Accordingly, the share scheme taxing date fell to be determined based on the first date:
    - the Shares were held for the benefit of the Taxpayer (s CE 7B(1)(a)), and
    - after which there was no material risk of a change in beneficial ownership of the Shares (s CE 7B(1)(a)(i)).

"When shares are held … for the benefit of an employee"

15. This means the shares must be held by the legal owner of the shares according to the company register, for the benefit of the employee. To hold shares for the benefit of someone means you are not beneficially the owner of the shares. The person for whose benefit you hold the shares is the beneficial owner.
16. Relevantly, an ESS is an arrangement with a purpose or effect of issuing or transferring shares in a company to an employee of the company or another company in the same group as the company.
17. Accordingly, an underlying premise of an ESS is the ultimate transfer of ownership of shares to an employee so that they become the legal owner. A person becomes the legal owner of shares when their name in entered in the company's share register as the holder of the shares.
18. Arguably, then, in s CE 7B(1(a), shares "held … for the benefit of an employee" are shares held by a person for the purposes of ultimately transferring the legal ownership of them to the employee.

No material risk that beneficial ownership may change

19. Under s CE 7B(1)(a), the relevant date is the first date shares are held by or for the benefit of an employee and after which there is no material risk that beneficial ownership may change. Accordingly, s CE 7B(1)(a) envisages that shares may be "held by of for the benefit of an employee" while there is a risk the employee may forfeit the shares or be required to transfer them to someone else. If there is a material risk the employee may forfeit the shares the "share scheme taxing date" will be deferred.
20. Section CE 7B provides examples to assist in its interpretation. The examples illustrate circumstances where shares are "held by or for the benefit of an employee" while there is a risk the employee may forfeit beneficial ownership of the shares. In Example 1, shares are held by a trustee on trust for Alice, i.e. for her benefit, while there is risk of her forfeiting the shares if she leaves her employment within 3 years. The risk is material and defers the "share scheme taxing date". In Example 2, the shares are held on trust for Bob while there is a risk of him forfeiting the shares if he is dismissed for serious misconduct. The risk is not material and so does not defer the "share scheme taxing date".
21. The Commentary on the Bill (Commentary) under which the current ESS provisions were introduced explains the new "share scheme taxing date" as "when there is no real risk that beneficial ownership of the shares will change, or that the shares will be required to be transferred". The Commentary describes this date as the date the employee "owns the shares in the same way as any other shareholder".

Share options

22. The Commentary and the *Tax Information Bulletin* also said no change was proposed to the tax treatment of "straightforward employee share options". They said the tax treatment of such options was already reflected in the principle that the taxing date is when the employee owns the shares in the same way as any other shareholder.
23. TCO's view was that an option is a right to buy a thing at a specified price within a specified time. The definitions imply the holder of an option or right to buy shares does not own the shares before exercising the option or right.

Application to the facts

24. Based on the evidence presented before it, TCO concluded that the date the Rights vested was the first date the Shares were held for the benefit of the Taxpayer because:
    - The Rights granted to the Taxpayer under the ESS were rights to receive Shares, not options under which the Taxpayer had the right to buy the Shares and under which the Taxpayer had no beneficial ownership of the Shares until they did so. The Rights were not "straightforward employee share options" where the "share scheme taxing date" was the date the options were exercised.
    - The Company held treasury shares to transfer to employees when they exercised their Rights under the ESS. On the date the Rights vested, the Taxpayer became entitled to receive Shares held by the Company, which the Company would transfer to them when they exercised their Rights. When the Rights vested, then, the Company held the Shares for the purposes of ultimately transferring the legal ownership of them to the Taxpayer, i.e. the Company held the Shares for the benefit of the Taxpayer.
25. The date the Rights vested was also the first date after which there was no material risk the Taxpayer's beneficial ownership of the Shares would change because:
    - The risk of the Taxpayer forfeiting the Rights by failing to exercise them was immaterial. The Taxpayer did not have to pay anything for the Shares. Further, as the Shares were listed on a stock exchange there was a liquid market for the Shares, which meant any tax impost could be funded. Based on these factors, the Taxpayer forfeiting the Rights by failing to exercise them was highly unlikely. Consistently with this, the Company recognised an increase in net equity at the end of vesting periods for Rights granted under the ESS indicating it too considered employees forfeiting Rights by failing to exercise them was highly unlikely.
    - The risk of the Taxpayer being dismissed or a change in their role was also immaterial. Further, if the Taxpayer had resigned after the date the Rights vested, i.e. when they beneficially owned the Shares, it seems highly likely they would have first exercised the Rights.
    - Although the Shares had to have reached a specified minimum value before the Taxpayer could exercise the Rights, the Shares exceeded the required minimum value at all relevant times and neither CCS nor the Taxpayer suggested this requirement posed a material risk the Taxpayer's beneficial ownership of the Shares could change.

Conclusion

26. The "share scheme taxing date" for the Shares was when the Rights vested. This was June 2020 and June 2021. These were the first dates the Shares were held for the benefit of the Taxpayer and after which there was no material risk their beneficial ownership of the Shares would change.

REGULAR CONTRIBUTORS TO THE TIB

Tax Counsel Office

The Tax Counsel Office (TCO) produces a number of statements and rulings, such as interpretation statements, binding public rulings and determinations, aimed at explaining how tax law affects taxpayers and their agents. The TCO also contributes to the "Questions we've been asked" and "Your opportunity to comment" sections where taxpayers and their agents can comment on proposed statements and rulings.

Legal Services

Legal Services manages all disputed tax litigation and associated challenges to Inland Revenue's investigative and assessment process including declaratory judgment and judicial review litigation. They contribute the legal decisions and case notes on recent tax decisions made by the Taxation Review Authority and the courts.

Technical Standards

Technical Standards sits within Legal Services and contributes the standard practice statements which describe how the Commissioner of Inland Revenue will exercise a statutory discretion or deal with practical operational issues arising out of the administration of the Inland Revenue Acts. They also produce determinations on standard costs and amortisation or depreciation rates for fixed life property used to produce income, as well as other statements on operational practice related to topical tax matters. Technical Standards also contributes to the "Your opportunity to comment" section.

Policy and Regulatory Stewardship

Policy advises the Government on all aspects of tax policy and on social policy measures that interact with the tax system. They contribute information about new legislation and policy issues as well as Orders in Council.