

IT 2143 - Taxation (unpaid company tax) : trust estates ceasing to exist prior to assessment



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TAXATION RULING NO. IT 2143

TAXATION (UNPAID COMPANY TAX) : TRUST ESTATES CEASING
TO EXIST PRIOR TO ASSESSMENT

F.O.I. EMBARGO: May be released

REF

H.O. REF: 84/3870-6

DATE OF EFFECT: Immediate

B.O. REF:

DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1167005	T(UCT) RECOUPMENT	T(UCT)AA 4(10)
	TAX LEGISLATION	T(UCT)AA 5(16)
	TRUST ESTATES	T(UCT)AA 6(1)
	CEASING TO EXIST	T(UCT)AA 6(18)
	PRIOR TO ASSESSMENT	T(UCT)AA 6(19)

OTHER RULINGS ON TOPIC: IT 2063

PREAMBLE

The question has arisen whether beneficiaries of deceased estates that have ceased to exist are liable to recoupment tax where, at the date of the company strip, the trustee of the estate was either a vendor shareholder of the target company or a person at the secondary level.

2. Representations have been received claiming that the circumstances of the former beneficiaries of these estates do not substantially differ from those of beneficiaries of estates where the deceased was a vendor shareholder or former owner who died after the date of the company strip but before being served with a recoupment tax assessment.

3. Where a person who has sold shares in a target company dies before being served with a recoupment tax assessment, neither the trust estate nor the beneficiaries of the estate is liable to recoupment tax applicable to the deceased person's share of the evaded company tax. This is because, in relation to a natural person, a primary taxable amount or secondary taxable amount can only exist if that person is still alive.

RULING

4. By way of contrast, sub-sections 5(16) and 6(19) specifically ensure that a taxable amount will exist in relation to unpaid company tax notwithstanding that a trust, whose trustee would be liable to recoupment tax, has ceased to exist prior to assessment. In those circumstances, sub-section 6(1) provides that the liability to recoupment tax of a trustee of a trust estate which no longer exists should be traced to those beneficiaries who held an interest in the corpus of the trust estate. As a matter of interpretation, it is considered therefore that in the situation under consideration the beneficiaries are liable for recoupment tax.

5. The general purpose of sub-section 6(1) is to attach a recoupment tax liability on those persons who in reality benefited from the non-payment of the company tax. In this context, the consideration received by a trustee of a deceased estate on the sale of shares in the target company includes an amount attributable to the company's unpaid company tax. Upon the winding up of the estate, that benefit (or the benefit received by the trustee as a person at the secondary level) is usually passed on to the beneficiaries. Accordingly, when the purpose of the legislation is taken into account, there is further support for the conclusion that the beneficiaries should be subject to recoupment tax.

6. Sub-section 4(10) specifically deals with the remedy available to the Commissioner in respect of the collection of recoupment tax from the estate of a person who dies after a recoupment tax assessment has been served. However, this is not considered to suggest in any way that a taxable amount does not exist where it is the trustee of a deceased estate that has sold the shares in a target company.

7. It follows that beneficiaries of deceased estates that have ceased to exist are liable to recoupment tax where, at the date of the company strip, the trustee was either a vendor shareholder of the target company or a person at the secondary level. As the legislation draws no relevant distinction between a deceased estate and an inter vivos trust, this ruling applies equally to inter vivos trusts that have ceased to exist prior to assessment.

8. Where a beneficiary is able to provide sufficient evidence that he did not derive any benefit from the sale of the shares by the trustee, the discretion in paragraph 6(18)(a) will be exercised to relieve the beneficiary of his recoupment tax liability. Similarly, beneficiaries will also be granted relief if their liability to recoupment tax is less than \$100 (see generally Taxation Ruling No. IT 2063).

COMMISSIONER OF TAXATION
20 March 1985

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