IT 2456 - Income tax : tax avoidance schemes - tax benefit

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TAXATION RULING NO. IT 2456

INCOME TAX : TAX AVOIDANCE SCHEMES - TAX BENEFIT

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1010292	TAX AVOIDANCE SCHEMES	PART IVA
	TAX BENEFIT	177C
	ASSESSABLE INCOME	177F

PREAMBLE

Paragraph 177C(1)(a) of the Act provides that a reference in Part IVA to the obtaining by a taxpayer of a tax benefit in connection with a scheme shall be read as a reference to -

> "(a) an amount not being included in the assessable income of the taxpayer of a year of income where that amount would have been included, or might reasonably be expected to have been included, in the assessable income of the taxpayer of that year of income if the scheme had not been entered into or carried out;"

2. This Ruling considers the question of whether a tax benefit within the meaning of section 177C is obtained in connection with a scheme where an amount is not included in the assessable income of a taxpayer that might reasonably be expected to have been included under a particular provision of the Act if the scheme had not been entered into, notwithstanding that the scheme results either in an amount being included in the taxpayer's assessable income by virtue of a different provision of the Act, or an amount of income of a different description or nature being included in assessable income under the same provision. Arrangements of the kind being considered typically take advantage of the fact that different tax consequences can flow from amounts being included in assessable income by virtue of different provisions or under different descriptions.

3. Although not exhaustive, examples of the kind of arrangements being considered are:-

> (a) a scheme by which a sharetrader or person otherwise liable to be taxed in relation to a sale of shares (e.g. on capital gains) does not receive assessable income through a sale of shares but achieves much the same economic effect before tax by instead receiving dividends which may be subject to a section 46 rebate; or

(b) a scheme by which the nature of income is changed from property income to personal exertion income, trading income to property income or from interest income to non-interest income, in a manner that reduces or postpones tax liability.

RULING

4. The view is taken that, although a scheme may not result in a reduction overall in the assessable income of the taxpayer (and perhaps the assessable income might even be greater under the scheme), a tax benefit for the purposes of Part IVA may arise. Where the Part applies in such a case, sub-section 177F(2) requires the Commissioner, when making a determination under paragraph 177F(1)(a), to also determine the particular provision of the Act by virtue of which the amount is to be included in assessable income. This Ruling therefore rejects an interpretation of section 177C that would produce the result that Part IVA could not apply to include an amount under a particular income provision simply because the scheme included an amount in assessable income by virtue of a different provision or description, notwithstanding that the other requirements of the Part were satisfied and that the tax consequences under the different provisions or descriptions might be different.

5. The fact that the scheme might result in the inclusion of an amount in assessable income is not seen as decisive in considering whether a tax benefit arises. Paragraph 177C(1)(a) focuses on what has been left out of assessable income by the scheme - not on what has been included.

6. Assessable income as defined in section 6 means "all the amounts which under the provisions of this Act are included in the assessable income". Taxable income is calculated under section 48 by deducting all allowable deductions from the "total assessable income". That is, "assessable income" is the sum of a series of individual amounts. Each of those amounts is an "amount which under the provisions of this Act is included in assessable income". The view is therefore taken that it is not valid to regard the word "amount" in the reference in paragraph 177C(1)(a) as simply referring to a monetary component of the total assessable income.

7. The fact that some other amount is included in assessable income by virtue of the scheme becomes relevant in considering the different question of purpose under section 177D (see paragraph 8 below) and the appropriate application of paragraph 177F(3)(a), which provides a facility to make any adjustments necessary to compensate for what might otherwise result in elements of double taxation. In the type of case being considered it would generally be appropriate to make a determination under paragraph 177F(3)(a) so that the amount otherwise included in a taxpayer's assessable income of a year of income under the scheme is excluded from that assessable income.

8. It is stressed that before Part IVA can apply it is necessary that the purpose test of section 177D must be met, i.e. having regard to the factors listed in sub-paragraphs 177D(b)(i) to (viii) inclusive it would be concluded that a person entered into the scheme for the dominant purpose of enabling the taxpayer, or the taxpayer and others, to obtain a tax benefit. In this context, it is relevant that under sub-paragraph (iv) the result in relation to the operation of the Act that, but for Part IVA, would be achieved by the scheme must be taken into account. Thus, once there is found to be a tax benefit, the Commissioner is required to look at the real effect of the Act's operation. This necessarily involves looking at the overall tax result sought to be achieved by a scheme, including the effect of such provisions as section 46.

COMMISSIONER OF TAXATION

14 January 1988