TA 2002/2 - Scrip Loan and Option Arrangement

This cover sheet is provided for information only. It does not form part of *TA 2002/2 - Scrip Loan and Option Arrangement*

Taxpayer Alert

TA 2002/2

The Tax Office view on this arrangement is set out in Taxation Determination TD 2003/32.

FOI status: may be released

Taxpayer Alerts are intended to be an "early warning" of significant new and emerging tax planning issues or arrangements that the ATO has under risk assessment.

Taxpayer Alerts will provide information that is in the interests of an open tax administration to taxpayers. Taxpayer Alerts are written principally for taxpayers and their advisers and they also serve to inform ATO officers of new and emerging tax planning issues. Not all potential tax planning issues that the ATO has under risk assessment will be the subject of a Taxpayer Alert, and some arrangements that are the subject of a Taxpayer Alert may on further examination be found not to be of concern to the ATO.

Taxpayer Alerts will give the title of the issue (which may be a scheme, arrangement or particular transaction), briefly describe the issue and will highlight the features which the ATO considers give rise to taxation issues. These issues will generally require more detailed analysis to provide an ATO view to taxpayers.

The developers and marketers of an arrangement which is the subject of a Taxpayer Alert should provide the full facts of the arrangement to the ATO to enable the ATO to finalise its view.

Taxpayers who have entered into or are contemplating entering into an arrangement similar to that described in this Taxpayer Alert can seek a formal determination of the ATO's position through a Private Ruling. Such taxpayers might obtain their own advice and/or contact the ATO officer named in the Alert.

This Taxpayer Alert is issued under the authority of the Commissioner.

TITLE: Scrip Loan and Option Arrangement

This Taxpayer Alert describes an arrangement where a taxpayer enters into a scrip loan and takes out an option position over the same number of shares.

DESCRIPTION

The alert applies to arrangements having the following features:

1. A company declares a franked dividend.

2. The taxpayer borrows a parcel of shares in the company *cum* dividend from a lender before the shares become *ex* dividend.

3. The taxpayer also purchases an option from the lender over the same number of shares in the same company. The option may be closed out or sold. The option is cash-settled (i.e. no right to call for the physical delivery of the shares).

4. The taxpayer cannot sell, assign, or deal with the shares in any way without the express written consent of the lender.

5. The taxpayer is not entitled to exercise any voting power in relation to the shares or to retain any bonus shares or capital repayments.

6. The taxpayer pays the lender a transaction fee which approximates the value of the cash dividend on the shares borrowed.

7. A franked dividend is paid on the shares and the taxpayer is entitled to the dividend and the franking credits.

8. The parcel of shares is returned to the lender after the dividend has been paid.

9. The taxpayer may be obliged to apply the dividend in satisfaction of the transaction fee by way of set-off or otherwise.

10. The taxpayer returns the grossed-up dividend as income, claims a tax offset for the franking credits and claims a deduction for the transaction fee.

FEATURES WHICH THE ATO CONSIDERS GIVE RISE TO TAXATION ISSUES

The ATO considers that the arrangement outlined above gives rise to taxation issues which include:

(a) The entitlement to franking credits.

   i) Whether the arrangement satisfies the "at risk" requirement for the holding period rule in relation to entitlement to franking credits; and

   ii) The arrangement raises questions about the application of the anti-avoidance provisions directed against franking credit trading.

(b) The deductibility of the transaction fee.

(c) The correct tax treatment of the option in this arrangement.

(d) The application of the general anti-avoidance provisions of Part IVA of the ITAA 1936.

The Australian Taxation Office is examining these arrangements.

subject references:	
legislative references:	Section 8-1 and Pt 3-1 of the ITAA 1997, sections 160APHC to 160APHU and Part IVA section 177EA of the ITAA 1936
related taxpayer alerts:	
related practice statements:	PS 2001/15 – Taxpayer Alerts
related media releases:	
file references:	

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