

TA 2004/5 - Copyright Transfer Arrangement



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Taxpayer Alert

TA 2004/5

The Tax Office view on the arrangement considered in this Taxpayer Alert is set out in Taxation Determination TD 2005/1.

FOI status: may be released

Taxpayer Alerts are intended to be an "early warning" of significant new and emerging higher risk 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 higher risk tax planning issues. Not all potential tax planning issues that the ATO has under risk assessment will be 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.

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 also contact the ATO officer named in the Alert and/or obtain their own advice.

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

TITLE: Copyright Transfer Arrangement

This Taxpayer Alert describes an arrangement involving a transfer of client records that have been created or acquired in which copyright may subsist. The taxpayer, who is unable to claim a deduction in relation to any copyright in the client records it has created, disposes of the records to an entity that is part of the same wholly-owned group. That entity then claims a deduction in relation to copyright under the capital allowance provisions.

DESCRIPTION

This Alert applies to arrangements having some or all of the following features:

1. In the ordinary course of business, Company A creates client records. Company A has also acquired client records as a result of various business acquisitions. The information in these records is of value to Company A in its ongoing business activities.
2. Company A recognises copyright in the client records post acquisition and apportions a

significant amount of the consideration attributed in the contract to goodwill and/or other unspecified intangibles to this copyright. Company A then proceeds to claim a capital allowance deduction for the copyright.

3. Company A does not claim a capital allowance deduction for the copyright in the internally created client records.
4. Company A then makes a loan to Company B. In turn, Company B makes a loan of the same amount to Company C. These three companies are all within the same wholly-owned group but have not yet consolidated for income tax purposes.
5. Company C purchases all of the client records and any copyright that may subsist in the records from Company A. The consideration payable by Company C is the same amount as the loan it received from Company B.
6. Company C claims a deduction under the capital allowance provisions based on the entire amount of the consideration paid, purportedly on the basis that that amount is attributable to any copyright that may subsist in the records.
7. Company C uses the low-value pool provisions to accelerate the capital allowance deduction on the basis that each item of copyright is a separate asset.

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) Whether Company A and Company C are the holders of depreciating assets.
- b) Whether the contract consideration can be re-characterised.
- c) Whether the valuation methodology used accurately reflects the value attributable to the copyright.
- d) Deductibility under Division 40 (the capital allowance provisions) of the *Income Tax Assessment Act 1997* (the ITAA 1997).
- e) Whether the rollover provisions in Division 40 of the ITAA 1997 have been complied with.
- f) The application of the general anti-avoidance provisions of Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936).

The Australian Taxation Office is examining these arrangements.

<i>subject references:</i>	copyright, capital allowances, goodwill
<i>legislative references:</i>	ITAA 1997 Division 40 ITAA 1997 Section 40-180 ITAA 1997 Section 40-340 ITAA 1997 Subdivision 40-E ITAA 1936 Part IVA
<i>related tax rulings:</i>	
<i>related practice statements:</i>	PS LA 2008/15
<i>related media releases:</i>	
<i>file references:</i>	

Date issued:	9 March 2004
Authorised by:	First Assistant Commissioner Mr Kevin Fitzpatrick
Contact Officer:	Ms Sharon Kelly
Business Line:	Large Business & International
Section:	National Client Group
Phone:	(07) 3213 5266
