


IT 2100 - Trust stripping settlement guidelines

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TAXATION RULING NO. IT 2100

TRUST STRIPPING SETTLEMENT GUIDELINES

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I 1121955	INCOME TAX AVOIDANCE TRUST STRIPPING SETTLEMENT GUIDELINES	DIVISION 6 26(a)

PREAMBLE

In a trust stripping scheme it is claimed that income of a family trust has been diverted through a chain of trusts to persons or entities who are associated with a promoter and who, in fact, do not pay tax on the income. Under the arrangements the income so diverted, less the promoter's fee, has been reimbursed to the family members or an associated entity in a form that is also claimed to be non-taxable.

2. The advice of senior counsel has been obtained regarding the efficacy of trust stripping schemes, and this supports the view that such schemes are not effective in achieving their tax avoidance purpose. Accordingly, assessments are being raised on the basis that the relevant target trusts have not made an effectual distribution to the promoter entity (the "sham assessments"). Under this approach the assessments are, in the main, being directed to the family beneficiaries who, in terms of the trust deed, are eligible in default of appointment to the promoter entity. In addition, assessments are being raised, where appropriate, on the basis that the reimbursement to the family group is taxable under the Income Tax Assessment Act (the "sub-section 26(a) assessments").

3. As a result of this assessment action, many taxpayers have approached this office with a view to settlement of the tax liabilities arising in respect of their participation in trust stripping schemes. The purpose of this ruling is to provide guidelines to ensure the consistent and even-handed treatment of those taxpayers who seek to settle the matters in dispute.

RULING

4. In view of the advice received from senior counsel, the minimum offer of settlement of tax liabilities that could be

accepted is full payment of the primary tax payable under the "sham assessments" (i.e. the assessments raised on the basis that the scheme transactions constitute a sham), together with an appropriate amount of late payment penalty that has accrued on those assessments. Deputy Commissioners have authority to reach such settlements.

5. It would be a necessary part of a settlement that the taxpayers concerned agree not to lodge objections against the relevant sham assessments or, where objections have already been lodged, to not contest the Commissioner's decisions on the objection.

6. Settlement on this basis will result in the withdrawal of the sub-section 26(a) assessments, or obviate the raising of such an assessment.

Promoter's Fee

7. In calculating tax liabilities for settlement purposes, no allowance is to be made for that part of the purported distribution to the promoter entity which was retained by it as a promoter's fee. The whole distribution is regarded as a sham and assessed in that light.

Interest

8. As the basis of settlement is that all the scheme transactions constitute a sham, any interest deduction claimed by the trustee of the target trust in respect of loans purportedly made in connection with the scheme is disallowed. Consistent with this approach, the assessment of this interest in the hands of the recipient may be foregone as part of a settlement.

Remission of Section 226 Additional Tax

9. The extent of any remission under sub-section 226(3) of additional tax imposed by sub-section 226(2) requires the exercise of the discretion in the light of the facts of each case, and the person exercising that discretion cannot be circumscribed by hard and fast rules; at the same time this principle is not breached by setting out broad guidelines to ensure uniformity between offices. These guidelines are covered, in the main, by Taxation Ruling No. IT 2012.

10. Generally speaking the basic rate of post-remission penalty envisaged by IT 2012 is 10% p.a. (20% p.a. after 13 February 1983) plus 40% subject to increase depending on the degree of culpability and non co-operation. However, there are a number of factors peculiar to trust stripping cases which can, in a settlement context, justify a substantial further remission of the statutory penalty. Accordingly, it has been decided that where settlement is sought on the basis set out in this ruling before 1 December 1984, settlement offers on the basis of full remission of section 226 additional tax may be accepted. This applies whether or not assessments on the sham basis have been

issued by that date.

Time to Pay/Section 207

11. Because of the special factors that exist in trust stripping cases such as the separate assessment action that has resulted from the alternative bases of assessment and the ongoing detection activities, it is recognised that adherence to the normal approach in respect of additional tax for late payment could be seen to produce inconsistencies and inequities in settlement cases. It has therefore been decided that substantial remissions of late payment penalties should be granted in cases where taxpayers make prompt and full payments under early acceptable settlement offers. Accordingly, where a settlement offer, acceptable in terms of the above paragraphs, is made and the full amount of tax calculated in accordance with that offer is paid on or before 1 October 1984, any late payment penalty payable under section 207 in respect of the sham assessments will be reduced to an amount not exceeding one month's additional tax (i.e. 1.66% of the tax payable under the settlement).

12. To the extent that full payment of tax that is due for payment is not made by 1 October 1984, late payment penalty, in addition to one month's additional tax up to 1 October (where relevant) will commence running from that date at 20% p.a. Of course there will be no late payment penalty where the assessments against default beneficiaries are paid by the due date. This is so irrespective of what assessments have issued on other bases and when those other assessments were payable.

COMMISSIONER OF TAXATION

30 August 1984

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