


IT 2202 - Income tax: new generation trust stripping schemes: assessing and settlement guidelines

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TAXATION RULING NO. IT 2202

INCOME TAX: NEW GENERATION TRUST STRIPPING SCHEMES:
ASSESSING AND SETTLEMENT GUIDELINES

F.O.I. EMBARGO: May be released

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INCOME TAX AVOIDANCE
TRUST STRIPPING
MULTIPLE SUB-TRUSTS SCHEME
CHARITABLE TRUST SCHEME

95A(2)

OTHER RULINGS ON TOPIC IT 2059, 2100, 2102, 2106, 2126 & 2127

PREAMBLE

This ruling outlines the assessing and settlement guidelines regarding the so-called "new generation" trust stripping schemes which sought to exploit sub-section 95A(2) of the Income Tax Assessment Act. Under that provision a beneficiary having a vested and indefeasible interest in the income of a trust estate, is deemed for assessment purposes to be presently entitled to that income.

2. The new generation schemes are of two kinds, the multiple sub-trust scheme and the sub-section 95A(2) charitable trust scheme. From the outset, neither scheme was accepted by the Taxation Office as being effective for taxation purposes. In addition, legislation was introduced against each scheme to put the matter beyond doubt.

3. These guidelines apply to new generation trust stripping schemes entered into before the date of effect of the relevant legislation. They should be read in conjunction with Taxation Rulings Nos. IT 2059, 2100, 2102, 2106, 2126 and 2127 which relate to other types of trust stripping schemes.

FACTS

Multiple Sub-Trusts Scheme

4. Under this scheme a head trust was established with multiple sub-trusts as beneficiaries. The trust deed of the head trust sought to confer on the trustees of each of the sub-trusts an indefeasible and vested interest in a share of the net income of the head trust amounting to less than the tax threshold amount. However, in terms of the trust deed or the trustee's resolutions payment of that income is postponed for a period (typically a year and a day) to prevent possession by the trustees of the sub-trusts. Nonetheless, it is claimed that those trustees are deemed to be presently entitled under sub-section 95A(2). If this were successful, the trustee of the

head trust would be assessed in respect of each sub-trustee's share of income under sub-section 98(2) as if the income were that of an individual. This would enable, in turn, each sub-trust to obtain the benefit of individual rates of tax, including the zero rate for incomes up to \$4195 then applicable for 1981-82, effectively freeing the income from tax.

5. This scheme was covered by the Income Tax Assessment Amendment Act 1982 with effect from 28 August 1981.

Sub-Section 95A(2) Charitable Trust Scheme

6. A simple version of this scheme entailed the alleged distribution of income of a family trading trust (the head trust) to another trust (the charitable trust), the principal beneficiary of which was a tax exempt charitable institution. In some cases there was no head trust above the charitable trust. Under the terms of the trust deed of the charitable trust, the charity, although allegedly having a vested and indefeasible interest in the net income of the charitable trust, is not entitled to payment of the income until a much later vesting date, usually 80 years hence. Only a token payment is made to the charity at the time it obtains its interest. The bulk of the funds remain with the head trust in the form of loans from the charitable trust.

7. In reality, the charity derives virtually no benefit from the income allegedly allocated to it. Even if, in the fullness of time, the income were ultimately paid to the charity, the present value of that amount is negligible.

8. This scheme was covered by the Trust Recoupment Tax Assessment Act 1985, the operative date of which is 12 May 1982.

RULING

9. It is not accepted that the multiple sub-trusts scheme and the sub-section 95A(2) charitable trust scheme were effective for tax purposes prior to the amendments of the income tax law enacted to remove any doubts on that score.

Assessing Guidelines

(a) Multiple Sub-Trusts Scheme

10. This scheme is being challenged on the basis that its true effect was not to confer an indefeasible and vested interest in the trust income on the nominated beneficiaries in the year of income.

11. As a consequence, sub-sections 95A(2) and 98(2) are of no application in these circumstances and in many cases assessments have been raised against the trustee of the head trust in accordance with section 99A on the basis that no beneficiary is or is deemed to be presently entitled to the trust income. It is however recognised that an alternative basis of assessment may exist in cases where, in terms of the trust deed or the trustee's resolutions, specified beneficiaries are entitled to "take" the relevant trust income in the event

that the scheme arrangements are not effective in bestowing present entitlement or deemed present entitlement for taxation purposes.

(b) Sub-Section 95A(2) Charitable Trust Scheme

12. This scheme is being challenged on the basis that the arrangements are shams or otherwise not effective for tax purposes.

13. In relation to schemes entered into before 12 May 1982, assessments should be raised against the default beneficiaries of the head trust which purports to make distributions to the charitable trust. Where there are no default beneficiaries, the trustee of the head trust should be assessed under section 99 or 99A, as appropriate.

14. Where there is no head trust above the charitable trust, the default beneficiaries of the charitable trust should be assessed on the income to which the exempt beneficiaries are claimed to have a vested and indefeasible interest. In the absence of takers in default, the trustee is to be assessed.

Settlement Guidelines

15. Multiple sub-trust and sub-section 95A(2) charitable trust schemes may be settled on a remission of additional tax basis similar to that outlined in Taxation Ruling No. IT 2100 and later rulings regarding trust stripping.

16. In broad terms, taxpayers who seek on or before 20 December 1985 to settle these schemes on the basis that they will :

- (a) accept the assessment of the trust income to the persons who are eligible as default beneficiaries under the relevant trust deed and agree to withdraw, or refrain from lodging, objections against those assessments; and
- (b) enter into satisfactory arrangements for full payment of the income tax assessed to the default beneficiaries,

can expect the full remission of any additional tax imposed under the former section 226. In addition, any assessments previously issued that do not conform with the settlement terms will be withdrawn. Taxpayers wishing to take advantage of the opportunity to settle should make an immediate offer even though they may not yet have received assessments from the Taxation Office.

COMMISSIONER OF TAXATION
25 October 1985

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