


IT 2382 - Income tax : "Curran" type tax avoidance scheme - application of section 6BA

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TAXATION RULING NO. IT 2382

INCOME TAX : "CURRAN" TYPE TAX AVOIDANCE SCHEME -
APPLICATION OF SECTION 6BA

F.O.I. EMBARGO: May be released

REF H.O. REF: 83/6423 DATE OF EFFECT: Immediate
86/5414-0

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1210424	COST OF SHARES SCHEMES - CURRAN TYPE SHARE TRANSACTIONS - CURRAN TYPE TAX AVOIDANCE - CURRAN TYPE	6(1) 6BA 51(1)

OTHER RULING ON TOPIC: IT 2235

PREAMBLE

Taxation Ruling No. IT 2235 of 6 January 1986 dealt with the decision of the Supreme Court of New South Wales (Yeldham J) in Grant v F.C. of T 85 ATC 4806; 17 ATR 144. The facts and outcome of the case are fully stated in that Ruling and need not be repeated here. Suffice to say that the Court held that section 6BA of the Income Tax Assessment Act applied to a "Curran" type tax avoidance scheme so as to deny any deduction otherwise allowable under sub-section 51(1) of the Act.

2. The taxpayer appealed to the Full Court of the Federal Court of Australia from the decision of the Supreme Court. The Federal Court (Bowen C.J, Fisher and Beaumont J.J.) dismissed the appeal in a unanimous decision reported at 86 ATC 4413; 17 ATR 724. In so doing the Court upheld the construction placed upon section 6BA by Yeldham J, to the effect that the word "dividend" whenever used in the section includes "an amount debited against an amount standing to the credit of the share premium account".

3. The Federal Court also rejected an argument put on the taxpayer's behalf that no dividend was payable "to a taxpayer" as required by paragraph 6BA(1) (a) since the dividend payable in respect of the original shares was paid to a partnership. While the Court accepted that the dividend formed part of the gross income of the partnership involved for purposes of Division 5 of Part III of the Act it was nonetheless accurate to describe the dividend as an amount "payable to taxpayers" in terms of paragraph 6BA(1) (a).

4. The taxpayer sought special leave to appeal to the High Court of Australia from the decision of the Federal Court. The

application for special leave came on for hearing before the High Court (Gibbs C.J, Wilson, Brennan J.J) on 5 December 1986 and leave was refused. The Chief Justice stated, inter alia:

"... the Court does not see sufficient reason to doubt the correctness of the conclusion which has been reached by the Full Court of the Federal Court and special leave to appeal is refused."

RULING

5. Taxation Ruling No. IT 2235 is confirmed. The decision of the Full Court of the Federal Court is regarded as a direct precedent to be followed in cases in which taxpayers participated in a "Curran" type tax avoidance scheme where, in an attempt to circumvent the application of section 6BA, a share premium reserve is used for the issue of bonus shares.

6. Court appeals and Administrative Appeals Tribunal references, together with any undetermined objections, in cases deferred pending the finalisation of the appeal in the Grant case should now be resolved by applying the principles established by the decision in that case.

COMMISSIONER OF TAXATION
22 JANUARY 1987

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