TD 95/4 - Income tax: does the simple disposition of an income producing asset by a natural person to a wholly owned private company constitute the carrying out of a scheme to which Part IVA of the Income Tax Assessment Act 1936 will be applied?

This cover sheet is provided for information only. It does not form part of *TD 95/4 - Income tax: does the simple disposition of an income producing asset by a natural person to a wholly owned private company constitute the carrying out of a scheme to which Part IVA of the Income Tax Assessment Act 1936 will be applied?*

This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

Australian Taxation Office

Taxation Determination **TD 95/4**

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: does the simple disposition of an income producing asset by a natural person to a wholly owned private company constitute the carrying out of a scheme to which Part IVA of the *Income Tax Assessment Act 1936* will be applied?

1. No. Of itself, the simple disposition of an income producing asset by a natural person to a wholly owned private company is not an arrangement to which the Commissioner will seek to apply Part IVA of the *Income Tax Assessment Act 1936* (the Act). Examples are outlined below.

2. It should be noted however that where there are other associated transactions, transfers or arrangements, whether antecedent or subsequent, the disposition will be examined within that broader context, and it may be concluded that Part IVA of the Act should be applied.

Example 1:

Geoff holds a significant portfolio of shares in a number of public companies. Most of these pay out fully franked dividends. Geoff disposes of his shares to a wholly owned private company which has been newly incorporated for that purpose. The intention is that the earnings from the shares will be retained in the company until such time as it is considered appropriate to declare and pay a dividend to Geoff.

Example 2:

Anna holds a rental property. The initial intention was that the property would be negatively geared. However, because of an unexpected reduction in interest rates a net profit is now being returned. Anna disposes of the property to a wholly owned private company which has been newly incorporated for that purpose. The intention is that the rental earnings from the property will be retained in the company until such time as it is considered appropriate to declare and pay a dividend to Anna.

Example 3:

Karl holds a parcel of shares in XYZ Pty Ltd which currently have an indexed cost base of $10,000, and a market value $15,000. The shares were acquired by Karl after 19 September 1985. Karl

wishes to sell the shares to finance another investment, and prior to arranging the sale, he disposes of the shares to his wholly owned family company (or alternatively disposes of them to a wholly owned private company which has been newly incorporated for that purpose). The company sells the shares, retains the gain, and makes the new investment. The Commissioner will not seek to apply Part IVA to these facts alone.

However, if for example there were objective evidence of an antecedent arrangement to sell the shares, suggesting that the use a private company was no more than a late contrivance the dominant purpose of which was simply to reduce the level of tax on that sale, it is likely that Part IVA would be applied.

Note: *In the above examples, it is assumed for the purposes of this Determination, that the capital gains tax rollover relief provisions (section 160ZZN of the Act) would apply to the disposal of the assets to the wholly owned company.*

Commissioner of Taxation
16/03/95

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