


IT 121 - Section 26AAA - property transactions arising from liquidation

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TAXATION RULING NO. IT 121

SECTION 26AAA - PROPERTY TRANSACTIONS ARISING FROM LIQUIDATION

F.O.I. EMBARGO: May be released

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I 1100682 COMPANY IN LIQUIDATION 26AAA
PROPERTY TRANSACTIONS

PREAMBLE

The following advice was forwarded to Branch Offices as a result of specific matters raised concerning the application of section 26AAA in relation to transactions arising from the liquidation of companies.

RULING

FIRST MATTER

2. A transfer of investments or other property in satisfaction of a liquidator's distribution to shareholders is not within the natural meaning of a "sale" as used in section 26AAA(3) and such a transfer has not been brought within the extended meaning of the word for the purposes of the section. Section 26AAA(1)(f) operates to deem certain transfers of property to constitute a "sale" but only if made -

- (a) in exchange for other property; or
- (b) without consideration.

SECOND MATTER

3. If the liquidator acts to subscribe for a parcel of new issue shares on behalf of the company under liquidation, section 26AAA(1)(d) will apply so as to deem the parcel of shares to have been purchased. In the event of the shares being sold within 12 months of acquisition any profit on the sale would be subject to tax under sub-section 26AAA(2).

4. On the other hand, if the newly acquired parcel of shares is transferred in specie to a shareholder by way of a distribution by the liquidator, that transfer would not constitute a "sale" of the shares (see para. 2 above) and sub-section (2) could have no application.

THIRD MATTER

5. The sale by a shareholder of rights that have been issued to him is not caught by the provisions of section 26AAA. In this regard the legislation does not deem the issue of rights

to constitute a "purchase". However, it should be noted that a person who buys rights and, within 12 months, sells them on the market would be assessable on any profit under sub-section (2).

FOURTH MATTER

6. An issue of shares in response to an application and subscription is specifically deemed to be a purchase of the shares under section 26AAA(1)(d). It follows that any profit arising from a sale of the shares inside 12 months will be assessable income under sub-section (2). As mentioned in paragraph 2, however, a transfer of the shares in specie in a liquidator's distribution would not be subject to the new provisions.

COMMISSIONER OF TAXATION