IT 135 - Tax avoidance: theatrical entertainers

TAXATION RULING NO. IT 135

TAX AVOIDANCE: THEATRICAL ENTERTAINERS

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1071770	PROFESSIONAL INCOME TAX AVOIDANCE THEATRICAL ENTERTAINERS FAMILY COMPANIES DIVERSION OF INCOME	260

PREAMBLE Consideration was given to the taxation treatment to be applied where there is an arrangement to divert, to a family company, professional income derived by an entertainer from television.

FACTS 2. The entertainer, , formed a private company, which was incorporated on with two shareholders:-

- - 1 'A' Preference Share
1 'B' Ordinary Share

wife of

The 'A' Preference share carries 76% of the voting rights until the death of and is entitled only to a non-cumulative dividend of 5% of paid-up capital. The 'B' class share had no such restriction in respect of dividend payments.

3. By agreement between and , is required to provide the exclusive services of to as a . Previously a contract between and the company had required to provide identical services. has given a guarantee of performance in the event of breaching its obligations under the agreement.

4. An agreement between and secures the services of to the company and provides for salary payments to him and for the use by him of any company car. The terms of the agreement provide for to complete any unfilfilled engagements in the event of the company going into liquidation or official managership and also for the assignment of contracts in respect of these engagements to to ensure that he receives all payments and benefits from them.

5. wife, in addition to her status as

shareholder, is employed by the company providing secretarial and public relations services for which she is paid a salary of $1,560. This amount had been reduced to $1,040 without attracting objections in assessments for the two years prior to the incorporation of the family company. She has no special qualifications and takes no significant part in any of his shows.

6. The company's share structure is such that virtually the whole of any dividend declared flows to wife. In addition, an appreciable amount of salary is being paid to the wife and contributions are being made to a superannuation fund presumably for the benefit of both and his wife. It is therefore reasonable to conclude that avoidance of tax was a purpose of the arrangement described.

7. On the other hand, the formation of the company and the execution of the various contracts can hardly be explained as an ordinary business dealing. There is nothing which suggests that the course of action was designed to enable to perform his duties as a and more efficiently or effectively than would otherwise be the case and his activities were not of a kind that would benefit from the protection of limited liability.

8. Neither is it considered that the arrangement is capable of being explained as a family dealing. It settled no property on Mrs nor did it provide her with any other lasting benefit. Its only effect was to give her a share of her husband's earnings for the time being - a temporary benefit which would disappear upon termination of the contract with the company. This result could have been more conveniently achieved if had simply made a gift of portion of his current earnings.

RULING 9. It follows that section 260 is considered to operate to set aside the arrangement in question.

10. The unreported decision of Board of Review No.2 in the reference of (Board's reference Nos. M254/1967 and M59-72/1968) is not expected to inhibit the defence of the assessments. In that case , who was known professionally as , established a family company which derived income from numerous sources apart from those involving personal services to a television company. It received payments for the appearances of , his wife and daughter in a number of commercials. It contributed articles to newspapers and magazines which were written, to a large extent, by persons other than . The company sold a variety of goods and, indeed, during one of the years under review sales totalled $15,217. It received income in the form of rent, interest and dividends. The success of these activities was due to the combined efforts of the whole family including mother, and in addition, both the wife and mother contributed an appreciable amount of material for use in shows.

11. Notwithstanding the difficulties presented by these facts the Chairman decided that, by reason of section 260, the payments made by the television company under contracts which required to serve it as a compere and artist (but not the income from other sources) were assessable to rather than to his family company. Perhaps more significantly, the members of the Board comprising the majority said that if the company had not been otherwise involved in the family business affairs they would have considered the Commissioner's stand to have had some substance.

12. In the circumstances it was decided that should be assessed on the basis that he was the recipient of all payments made by the television company to and that he incurred the expenses of gaining the income.

13. Assessments should be made on the basis described above in any substantially similar cases awaiting assessment in your office. Cases involving features of unusual difficulty might be referred to this office for decision if this course is considered to be desirable.

14. Assessors encountering the returns of entertainers, artists or other persons engaged in similar activities where the facts of the case indicate that remuneration for personal services is being diverted to a family company, should direct the return to the nominated Entertainers Assessor, Company Section, who will determine whether a prima facie case of tax avoidance is present and, if so, will refer it for suitable action by Investigation Section.

COMMISSIONER OF TAXATION