

# ***IT 15 - Sale of property within 12 months of purchase: application of section 26AAA(5)(c)***



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TAXATION RULING NO. IT 15

SALE OF PROPERTY WITHIN 12 MONTHS OF PURCHASE.  
APPLICATION OF SECTION 26AAA(5) (c)

F.O.I. EMBARGO: May be released

REF

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PROPERTY SOLD WITHIN 26AAA  
12 MONTHS

SALE OF PROPERTY 26AAA(5) (c)  
ASSESSABLE PROFITS  
WORKPLACE CHANGE IN

FACTS

The Taxation Board of Review No. 2 considered the application of section 26AAA and sub-section 26AAA(5) (c). The decision and reasons are reported as 81ATC Case N48; 25 CTBR(NS) Case 2.

2. Briefly stated the facts are that on 26 November 1975 the taxpayer and his wife purchased a property, and used it as their sole residence. At the time of purchase the taxpayer was employed as a salesman with a firm in a town some 30 miles away. Subsequently the taxpayer decided to become self-employed and on 4 April 1976 he and his wife contracted to purchase a retail business which was opposite the property previously purchased. To finance the purchase of the retail business the taxpayer decided to sell the residence and obtain bridging finance from the bank until it was sold. The property was sold on 6 May 1976 some 7 months after purchase.

3. The taxpayer and his wife, in addition to leasing the premises from which the business was conducted, also leased a residence on a block adjoining that on which the shop is located. The taxpayer gave evidence, which was accepted by the Board, that it was essential to lease both the house and the shop because the shop had no toilet facilities and these had to be provided for themselves and the employees. The house provided these facilities.

4. There was no dispute as to the salient facts and the question for decision by the Board was whether section 26AAA(5) (c) applied to those facts i.e. whether the sale of the residence took place as a result of the change of the place of employment or place of business of the taxpayer. The Commissioner's contention was that the section did not apply because -

- (i) there was no change in the taxpayer's place of employment or place of business; or

- (ii) the sale of the residence did not take place as a result of such a change but rather as a result of the taxpayer's decision to become self-employed.

5. As regards the Commissioner's first argument the Board took the view that it is too narrow an interpretation of section 26AAA(5)(c) to say that it applies only where an employee changes his place of employment or a businessman changes his place of business. The Board took the view that section 26AAA(5)(c) negates the operation of section 26AAA(2) in all cases where the sale takes place as a result of change in "workplace" irrespective of whether the taxpayer in the process of changing his status from employee to self-employed or otherwise. The Board's reasoning on this point is accepted.

6. In considering the Commissioner's second argument the Board observed that section 26AAA(5)(c) requires that the sale take place "as a result" rather than "as the result" of the change of the taxpayer's place of employment/business. The Board concluded that there must be a causal connection between the sale and the change in "workplace" and that the question is whether the sale was a result, or did it follow from, or was it a consequence of, the taxpayer's change of "workplace". Further, the Board considered that for section 26AAA(5)(c) to apply the sale must be a proximate result of the change in "workplace".

7. The Board found that the sale in this reference had taken place as a result of the change in "workplace". The reasoning was that the taxpayer, having decided to become self-employed also had to change his "workplace". As a result of this latter change the taxpayer sold the property purchased and used as the sole residence. In other words the Board accepted the Commissioner's contention that the change in employment status was a reason for the sale but it also took the view that the change in "workplace" which resulted from the change in status was a reason for the sale.

RULING

8. As mentioned, the Board's conclusion in respect of the Commissioner's first argument is accepted. With respect, some reservations are held as to whether the Board's conclusion on the second point is well founded. It seems that both the sale and the change in "workplace" were results of the change in employment status, but doubts are held as to whether the sale can correctly be said to be a result of the change in "workplace" as required by the section. If the taxpayer had been employed in the retail business at the time he decided to buy it, the sale would presumably still have taken place despite the lack of a change in "workplace". However, the matter is not free from doubt and the amount of tax involved is not substantial. Also the particular facts of this case are most unusual and are thought to be unlikely to arise again. The decision is not expected to have any general application. Against this background it was decided not to appeal against the Board's decision.

COMMISSIONER OF TAXATION