IT 2668A - Addendum - Income tax: barter and countertrade transactions

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Addendum

Taxation Ruling

Income tax: barter and countertrade transactions

This Addendum amends Taxation Ruling IT 2668 to update legislative references, align it with Goods and Services Tax Ruling GSTR 2003/14 (dealing with transactions between members of barter schemes) and clarify the application of the fringe benefit tax provisions in relation to barter and countertrade transactions.

Taxation Ruling IT 2668 is amended as follows:

1. Subparagraph 1(d)

Omit the subparagraph.

2. Paragraph 6

(a) Omit 'Subsection 25(1) of the Income Tax Assessment Act 1936 ("the Act")'; substitute 'Division 6 of the *Income Tax Assessment Act 1997* (ITAA 1997)'.

(b) Omit 'certain termination payments (assessable under other provisions of the Act)'; substitute 'non-assessable non-exempt income'.

3. Paragraph 7

Omit 'subsection 25(1)'; substitute 'Division 6 of the ITAA 1997'.

4. Paragraph 8

(a) Omit 'subsection 25(1)' wherever occurring; substitute 'Division 6 of the ITAA 1997'.

(b) Omit 'section 23L of the Act'; substitute 'subsection 23L(2) of the *Income Tax Assessment Act 1936* (ITAA 1936)'.

5. Paragraph 9

Omit the paragraph; substitute:

> 9. Consideration received by employees (other than in cash) for services rendered generally falls within the provisions of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA). In determining whether the FBTAA will apply in relation to the provision of credit units to an employee through a business oriented countertrade organisation it is necessary to consider the actual terms of remuneration agreements between the employer and the employee. The FBTAA would apply where it is clear from the remuneration agreements that a 'fringe benefit' has been provided to an employee. However, it is possible in some arrangements that the crediting of units to an employee's trade unit account may amount to a dealing with the employee's salary and wages by the employer after it is derived by the employee.[1]

6. Paragraph 11

Omit 'subsection 25(1)' wherever occurring; substitute 'Division 6 of the ITAA 1997'.

7. Paragraph 12

(a) Omit 'subsection 25(1)'; substitute 'Division 6 of the ITAA 1997'.

(b) Omit 'F.C. of T. v. Cooke & Sherden 80 ATC 4140; 10 ATR 696'; substitute '*FC of T v. Cooke & Sherden* (1980) 42 FLR 403; (1980) 10 ATR 696; (1980) 29 ALR 202; 80 ATC 4140'.

(c) Omit 'of the Act'; substitute 'of the ITAA 1936'.

8. Paragraph 13

Omit the paragraph; substitute:

> 13. Where the consideration received during a barter or countertrade transaction is not assessable under Division 6 of the ITAA 1997 but the transaction involves the disposal or acquisition of an asset, the capital gains provisions under Part 3-1 and 3-3 of the ITAA 1997 may apply. It is noted, however, that many of these transactions may involve a personal use asset as defined in subsection 108-20(2) of the ITAA 1997. Under subsection 118-10(3) of the ITAA 1997 capital gains on such an asset will be disregarded if it has been acquired for $10,000 or less. For example, where a taxpayer exchanges a guitar (acquired for $10,000 or less) for another taxpayer's motor mower (acquired for $10,000 or less) and the exchange is not otherwise part of a business transaction, no capital gains tax consequences would arise.

[1] See Taxation Ruling TR 2001/10, in particular paragraphs 25 to 27 and paragraph 33.

9. Paragraph 14

Omit ‘of the Act’ wherever occurring; substitute ‘of the ITAA 1936’.

10. Paragraph 15

Omit the paragraph; substitute:

> 15. As a general rule when valuing the consideration arising from barter or countertrade transactions, the Tax Office will accept a fair market value as adequately reflecting the money value or arm’s length value, as applicable. In most cases, the Tax Office will accept as a fair market value, the cash price which the taxpayer would normally have charged a stranger for the services or for the sale of the goods or property. The rules of most business oriented countertrade organisations specify a rate for converting credit units into an Australian dollar equivalent. Customarily the rules specify that each credit unit has a value equivalent to one Australian dollar. Consistent with the conversion rate that is specified, the rules will also typically provide that the amount of credit units exchanged under a transaction must reflect the market value of goods or services provided. Where the monetary value worked out using the rate specified in the rules represents a fair market value of the goods or services provided, that rate is to be applied when valuing the consideration. In all other cases, a conversion rate that values the goods or services provided at their fair market value is to be applied when valuing the consideration.
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> 15A. It should be noted that the parties to transactions which involve inflated credit unit values may have consequences other than adjustment to the amount of income returned or the amount of income tax deductions claimed. Transactions where the values are set at artificially high levels for the purpose (or a purpose) of establishing an inflated income tax deduction may indicate fraudulent activity.

11. Paragraph 16

Omit the paragraph; substitute:

> 16. The Tax Office accepts, on the valuation basis mentioned in paragraph 15 of this Ruling, that deductions under section 8-1 of the ITAA 1997 and other sections of the income tax law would be available where those sections would otherwise apply to similar cash transactions. For example, where a computer sales business gives a painter a computer in consideration for the painter's services in repainting the business premises, the arm's length money value of the computer would be an allowable deduction to the computer sales business.

12. Paragraph 17

(a) Omit first instance of 'subsection 51(1) of the Act'; substitute 'section 8-1 of the ITAA 1997 and any other relevant section of the income tax law'.

(b) Omit second instance of 'subsection 51(1)'; substitute 'section 8-1 of the ITAA 1997'.

13. Paragraph 18

Omit the paragraph, including the heading.

14. Paragraph 19

Omit 'Regulation 58 of the Income Tax Regulations and Regulation 30 of the Sales Tax Regulations'; substitute 'Regulation 18 of the Taxation Administration Regulations 1976'.

15. Legislative references

(a) Omit '25'; substitute 'Div 6'.

(b) Omit '51'; substitute '8-1'.

(c) Insert '108-20(2)', '118-10(3)', 'Pt 3-1' and 'Pt 3-3'.

(d) Omit 'STAA' and 'Sales Tax Reg 30'.

(e) Omit 'Income Tax Reg 58'; substitute 'TAR 1976 18'.

This Addendum applies on and from 27 February 2008.

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