TR 92/12A - Addendum - Income tax: notional averaging of net capital gains or of abnormal income to calculate the rate of tax payable on taxable income

Addendum: Income tax: notional averaging of net capital gains or of abnormal income to calculate the rate of tax payable on taxable income

This Addendum forms part of the Ruling and, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the ***Taxation Administration Act 1953****, it is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Ruling is a public ruling and how it is binding on the Commissioner.*

Taxation Ruling TR 92/12 is amended as follows:

1. **Paragraph 7**

   Omit 'more than $416 of '.

2. **Paragraph 11**

   Omit from the definition of **Eligible taxable income** 'It is taxed at the top marginal rate of tax (currently 47%).'; substitute:

   > 'If the amount of **ETI** does not exceed $416, it is treated as ordinary taxable income and would be liable to be taxed at ordinary rates.
   >
   > If the amount of **ETI** exceeds $416, but does not exceed $1,445, it is taxed in accordance with subsection 13(1) of the ITRA as modified by subsection 13(2).
   >
   > If the amount of the **ETI** exceeds $1,445, then the top marginal rate (currently 47%) will apply.'

3. **Paragraph 19**

(a) after ***Example 4*** insert:

'***Example 4A (variation of Example 4)***

The same facts as in **Example 4** except that Frank's net capital gain is $1,000 instead of $20,000 resulting in a taxable income of $9,000 consisting of:

Wages $8,000

Eligible taxable income $1,000

The rate of tax Frank will pay on his taxable income under subsection 13(1) as modified by subsection 13(2) and Part I of Schedule 11 of the ITRA is calculated as follows:

Step 1

Frank's **SIC** is the amount of his net capital gain, i.e., $1,000

Step 2

Frank's **RTI** is his taxable income *minus* **SIC**, i.e., $9,000 - $1,000 = $8,000

Step 3

Component A is the amount of tax Frank would pay on his **RTI** ($8,000). Because this is employment income it is taxed at ordinary rates. Therefore, **Component A** is $520.

Step 4

Frank will work out **Component B** like this:

(a) tax payable on ($8,000 + zero) at ordinary rates is $520

(b) tax payable on **RTI** at ordinary rates is $520

(c) **Component B** = 5 x ($520 - $520), i.e., zero.

Step 5

As the **ETI** of $1,000 exceeds $416 but does not exceed $1,445, subsection 13(2) of the ITRA must be applied to calculate **Component C**. The amount of tax payable on the **ETI** must not exceed the greater of two calculations required under paragraphs 13(2)(a) and 13(2)(b) of the ITRA.

(i) paragraph 13(2)(a) calculation:

(**ETI** - $416) x 0.66 = ($1,000 - $416) x 0.66 = $584 x 0.66 = $385.44

(ii) paragraph 13(2)(b) calculation:

tax on the taxable income of $9,000 at ordinary rates ($720) minus tax on the taxable income reduced by the **ETI** ($9,000 - $1,000 = $8,000), at ordinary rates ($520), = $200.

It follows that **Component C** as calculated under subsection 13(2) will be $385.44.

Step 6

The rate of tax Frank will pay on each dollar of his taxable income is:

$$\frac{\$520 + \text{zero} + \$385.44}{\$9,000} = 10.06044 \text{ cents'}$$

(b) after ***Example 5*** insert:

'***Example 5A (variation of Example 5)***

The same facts as in **Example 5** except that Frances' net capital gain is $1,000 instead of $2,000.

Step 1

Frances' **SIC** is the amount of her net capital gain, i.e., $1,000.

Step 2

Frances' **RTI** is her taxable income *minus* **SIC**, i.e., zero.

Step 3

Component A is the amount of tax a minor would pay on Frances' **RTI**. Because Frances' **RTI** is zero, **Component A** is also zero.

Step 4

Frances will work out **Component B** like this:

(a) tax payable on **RTI** (zero) + 20% of **SIC** which is not eligible taxable income (zero) is zero

(b) tax payable on **RTI** at ordinary rates is zero

(c) **Component B** = 5 x (zero - zero), i.e., zero.

Step 5

As the **ETI** of $1,000 exceeds $416 but does not exceed $1,445, subsection 13(2) of the ITRA must be applied to calculate **Component C**. The amount of tax payable on the **ETI** must not exceed the greater of two calculations required under paragraphs 13(2)(a) and 13(2)(b) of the ITRA.

(i) paragraph 13(2)(a) calculation:

(**ETI** - $416) x 0.66 = ($1,000 - $416) x 0.66 = $584 x 0.66 = $385.44

(ii) paragraph 13(2)(b) calculation:

tax on taxable income of $1,000 at ordinary rates (i.e., zero) minus tax on taxable income reduced by **ETI** ($1,000 minus $1,000) at ordinary rates (i.e., also zero). The difference is therefore zero.

In accordance with subsection 13(2) the tax on the **ETI** is therefore $385.44.

Step 6

The rate of tax Frances will pay on each dollar of her taxable income is:

$$\frac{\text{zero + zero + \$385.44}}{\text{\$1,000}} = \text{38.544 cents'}$$

4. **Attachment B**

(a) at **Step 3** after 'Calculate **Component A**' insert '(subject to the note at the end of this Attachment)'.

(b) at **Step 4** (a)(ii) omit '(explained in paragraph 18)'; substitute '(explained in paragraph 11)'.

(c) at **Step 5**

(i) after 'Calculate **Component C**' insert '(subject to the note at the end of this Attachment)';

(ii) omit '(explained in paragraph 18)'; substitute '(explained in paragraph 11)'.

(d) at the end, insert:

'**NOTE:** The rate of 47% as specified in **Steps 3** and **5** above, does not apply where the **ETI** exceeds $416 but does not exceed $1,445. In these cases, the tax attributable to the **ETI** is calculated under subsection 13(2) of the ITRA.'

Commissioner of Taxation

18 September 1996

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