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:

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

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

ATO Ref: NAT 90/471-6
NAT 96/9294-1

ISSN 1039 - 0731