INCOME TAX – TREATMENT OF A SUBDIVISION OF SHARES UNDER SECTION CB 4

PUBLIC RULING - BR Pub 13/01

This is a Public Ruling made under s 91D of the Tax Administration Act 1994.

Taxation Laws

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

This Public Ruling is about how s CB 4 applies to the Arrangement.

The Arrangement to which this Ruling applies

The Arrangement is where a company subdivides all of its shares and the following factors apply:

- The directors resolve that all of the shares in the company will be subdivided so that each share splits into an equal number of shares.
- The rights attaching to the shares will continue in existence throughout the subdivision process and will not be altered.
- Each shareholder's proportionate shareholding in the company will remain the same relative to the other shareholders.
- The subdivision will merely represent the reformatting of each shareholder's interest.

The Arrangement does not include situations where the rights of the shares are varied.

For the avoidance of doubt the Arrangement does not include arrangements where s BG 1 of the Act applies to void the arrangement.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

- The subdivision of shares does not result in a disposal of personal property for the purposes of s CB 4.

The period or tax year for which this Ruling applies

This Ruling will apply for a three-year period beginning 21 May 2013 and ending on 20 May 2016.

This Ruling is signed by me on 21 May 2013.

Ainsley Simmonds
Acting Director, Public Rulings

INCOME TAX – TREATMENT OF A DISPOSAL OF SUBDIVIDED SHARES UNDER SECTION CB 4

PUBLIC RULING - BR Pub 13/02

This is a Public Ruling made under s 91D of the Tax Administration Act 1994.

Taxation Laws

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

This Public Ruling is about how ss CB 4 and ED 1 apply to the Arrangement.

The Arrangement to which this Ruling applies

The Arrangement is where a shareholder holds shares in a company, and those shares were acquired for the purpose of disposal. The company then subdivides its shares, and the following apply:

- The directors resolve that all of the shares in the company will be subdivided so that each share splits into an equal number of shares.
- The rights attaching to the shares will continue in existence throughout the subdivision process and will not be altered.
- Each shareholder's proportionate shareholding in the company will remain the same relative to the other shareholders.
- The subdivision will merely represent the reformatting of each shareholder's interest.

After the subdivision, the shareholder disposes of some or all of their subdivided shares.

The Arrangement does not include situations where the rights of the shares are varied.

For the avoidance of doubt the Arrangement does not include arrangements where s BG 1 of the Act applies to void the arrangement.

How the Taxation Laws apply to the Arrangement

The Taxation Law applies to the Arrangement as follows:

- Section CB 4 applies to the disposal of the subdivided shares.
- The time of acquisition of a subdivided share held on revenue account is the time the original share (which was subdivided) was acquired.
- Under s ED 1, the cost of each subdivided share can be determined by dividing the cost of an original share equally between the subdivided shares into which the original share was divided.

The period or tax year for which this Ruling applies

This Ruling will apply for a three-year period beginning on 21 May 2013 and ending on 20 May 2016.

This Ruling is signed by me on 21 May 2013.

Ainsley Simmonds
Acting Director, Public Rulings

COMMENTARY ON PUBLIC RULING BR PUB 13/01 and BR PUB 13/02

This commentary is not a legally binding statement. The commentary is intended to help readers understand and apply the conclusions reached in Public Rulings BR Pub 13/01 and BR Pub 13/02 (the Rulings).

Legislative references are to the Income Tax Act 2007 unless otherwise stated. Relevant legislative provisions are reproduced in the Appendix to this commentary.

Contents

Summary

1. In the circumstances set out in the Rulings, a subdivision of shares does not result in a disposal of any shares for the purposes of s CB 4. This is because when a company subdivides shares, the original shares are not cancelled and the shareholder's rights are not altered or terminated by the subdivision.

2. When a shareholder who acquired the original shares on revenue account disposes of a subdivided share, s CB 4 will apply to the disposal. This is because the subdivided shares are the same property as the original shares acquired. Therefore, the time of acquisition of the subdivided shares is the time the original shares were acquired. Under s ED 1, a reasonable method to determine the cost of each subdivided share is to divide the cost of an original share equally between the subdivided shares into which the original share was divided.

Background

3. A subdivision of shares is variously known as a "share split", a "share subdivision", or as a type of "share reorganisation". One reason that a company might undertake a subdivision of shares is to improve the marketability of that company's shares.

4. There are at least three ways to achieve an increase in the amount of shares in a company, for no additional consideration, that are described as a subdivision of shares, namely:

- existing shares can be cancelled or redeemed, and, for no additional consideration, a greater number of shares can be issued to all shareholders in the same proportion as their original shareholdings;
- shares in addition to the original shares can be issued, for no additional consideration, to all shareholders in the same proportion as the shares already held;
- existing shares can be converted into a greater number of shares for no consideration.

5. The Rulings are concerned with only the third type of subdivision of shares.

6. Section CB 4 provides that an amount derived on the disposal of personal property acquired for the purpose of disposal, is income of the person. A share is a type of personal property: s 35 of the Companies Act 1993 (CA 1993). Therefore, in this context, questions arise as to the application of s CB 4 to a subdivision of shares and to the disposal of a subdivided share.

Application of the legislation

7. The Rulings consider two situations. These situations represent two points in time at which s CB 4 could apply to subdivided shares, namely the time at which the:
   - shares are subdivided;
   - subdivided shares are disposed of.

8. Whether s CB 4 applies in these situations depends on whether the subdivided shares can be regarded as the same property as the original shares.

Can the subdivided shares be regarded as the same property as the original shares?

9. Two broad requirements of s CB 4 must be satisfied. If these requirements are met, an amount that the person derives from disposing of the personal property is income of the person. The first requirement is that a person acquires personal property for the purpose of disposing of it. The second requirement is that the person disposes of the personal property.

10. The grammatical construction of s CB 4 shows that the property disposed of must be the same property as that acquired. When a subdivided share is then disposed of, the question arises as to whether the subdivided shares are the same property as the original shares. The answer to this question will also assist in determining the time of acquisition of the subdivided shares for the purposes of s CB 4.

11. In determining whether the subdivided shares can be regarded as the same property as the original shares, it is helpful to consider:
    - What is the nature of a share?
    - Does a subdivision of shares involve an issue of shares?
    - Have the original shares been disposed of or cancelled?
    - Have the shareholders' rights changed as a result of the subdivision of shares?

- Does the Act provide any guidance?

What is the nature of a share?

12. It is generally accepted that a share is a bundle of rights and obligations conferred under a contract between the shareholders and the company: *Borland's Trustee v Steel Brothers & Co Ltd* [1901] 1 Ch 279 (Ch); *Bradbury v English Sewing Cotton Ltd* [1923] AC 744 (HL); *IR Commrs v Laird Group plc* [2003] UKHL 54. This was confirmed by the New Zealand Court of Appeal in *Robertson v Bicknell* (CA129/01, 25 March 2002). In *Robertson*, the court also confirmed that the nature of the property in a share is the interest of a person in the company, that interest being comprised of various rights and obligations (at [23]).

13. The CA 1993 and the general law on shares suggest that shares are an "aliquot" (meaning a portion of a larger whole) interest in a company; that is, a bundle of rights and obligations representing the shareholder's proportionate interest in the company. The removal of par and nominal values for shares under the CA 1993 reinforces this approach.

14. Section 35 of the CA 1993 provides that a share in a company is personal property. In addition, s 36 of the CA 1993 sets out the basic rights and powers that attach to shares. These basic rights and powers include the right for the shareholder to vote at a meeting of the company on any resolution, the right to an equal share in dividends authorised by the board, and the right to an equal share in the distribution of surplus assets of the company. It is important to note that the rights and powers conferred by this section may be negated, altered or added to by the constitution of the company. Therefore, in any given situation, the constitution of a company (if it has one) will be an important factor in determining the nature of a share and the rights and powers attached to it.

Does a subdivision of shares involve an issue of shares?

15. If a subdivision of shares involves an issue of new shares, this may indicate that subdivided shares are different property from the original shares. Sections 41 to 51 of the CA 1993 provide rules on issuing shares. However, the CA 1993 does not provide any guidance about how to achieve a subdivision of shares. There is only one reference in the CA 1993 to subdivisions of shares and that is in s 48. Section 48 is an exception to the requirements in s 47 of the CA 1993 that apply to the issuing of shares by a company after its registration. One view is that this shows that a subdivision must involve an issue of shares – otherwise there would be no need for the express exclusion. The other view is that this was simply to avoid any doubt in this regard. Apart from this, the CA 1993 is silent about how subdivisions should be effected. It is difficult therefore to draw an inference from the CA 1993 as to whether a subdivision of shares involves an issue of new shares. In practice, a company's annual return is the method by which the Companies Register is updated to reflect changes in the number of shares held and by whom.

16. By comparison, the Companies Act 1955 (CA 1955) did include a procedure for the subdivision of shares. Sections 70 and 71 of the CA 1955 allowed a company to alter the conditions of its memorandum to, among other things, "subdivide its shares … into shares of smaller amount" and required the company to notify the Registrar. This process was a separate one from that required to issue shares: see, for example,

ss 14, 60, 70(1)(a), 72 and reg 2, Table A, Sch 3. This suggested that subdivisions of shares did not involve an issue of shares.

17. It has been suggested that the issue of shares involves the creation of property: *FCT v St Helens Farm (ACT) Pty Ltd* (1981) 146 CLR 336. Cases on the issue of shares support the view that a subdivision of shares does not involve an issue of shares. The thrust of these cases is that an issue of shares involves something leaving the company and being provided to the shareholder: *Central Piggery Co Ltd v McNicoll* (1949) 78 CLR 594; *National Westminster Bank plc v IR Commrs* (1994) 12 ACLC 3,215 (HL). The Commissioner considers that, in the case of a subdivision of shares, nothing has left the company or been provided to the shareholder. The shareholder has the same bundle of rights before and after the subdivision.

18. The CA 1955 suggested that subdivisions of shares did not involve an issue of shares. As noted, there is no clear process for subdivisions of shares under the CA 1993, but there is also no indication that the CA 1993 was intended to change the position under the CA 1955 in relation to subdivisions of shares. Given that the case law on what it means to issue shares shows that an issue involves something being provided by the company to the shareholder, it would seem that a subdivision of shares does not involve an issue of shares. Therefore, the Commissioner considers that the better view is that subdivisions of shares should be viewed as not involving an issue of shares.

Have the original shares been disposed of or cancelled?

19. The term "dispose" is not defined in s YA 1 for the purposes of s CB 4. (The term is defined for the purposes of other sections in the Act, but these definitions do not assist in this inquiry.) The courts have held that "disposal" means that the property is "got rid of", and is no longer in the control or possession of the disposer in any capacity: *FCT v Wade* (1951) 84 CLR 105; *Lyttelton Port Co Ltd v CIR* (1996) 17 NZTC 12,556 (HC); *Coles Myer Ltd v Commissioner of State Revenue (VIC)* (1998) ATC 4,537 (VICCA). As a result, the Commissioner considers that a "disposition" and/or "disposing" of property must involve the transfer or alienation of that property by the disposer.

20. Further, the provisions in the CA 1993 dealing with the cancellation of shares do not expressly apply to share subdivisions. This suggests that a subdivision does not involve the cancellation of the shares being subdivided. In addition, the case law shows that a "disposition" and/or "disposing" of property must involve total alienation of that property by the disposer. The absence of the cancellation of the existing shares and the fact the shareholder's interests in the company are never alienated on a subdivision of shares suggests the original shares continue in existence.

21. In addition, when a company subdivides all the shares in the company, the shareholders do not lose control of their proportionate shares in the company between holding the original shares and holding the subdivided shares.

Have the shareholders' rights changed as a result of a subdivision of shares?

22. As noted above, the basic rights attaching to a share (under the CA 1993) include the right to vote, the right to an equal share in dividends and the right to an equal share in the distribution of surplus assets. It might be

argued that a subdivision of shares involves changes to a shareholder's rights in some way; given, for example, the number of votes held by the shareholder may increase in nominal terms. However, if this is viewed in terms of a share being a bundle of rights, then nothing has changed. The proportionate interest (and rights) that the shareholder had before and after the subdivision of shares remains the same. Said another way, the shareholder has, for example, a greater number of votes but the same proportionate voting interest in the company. Therefore, the Commissioner considers that a subdivision of shares has little effect on shareholders' rights – the subdivision results in more shares, but the shareholders' proportionate interest in the company does not change.

23. The cases on subdivisions of shares in other legal contexts generally take the view that a subdivision of shares does not give rise to new property: *Whittome v Whittome (No 1)* (1994) SLT 114 (OH); *Greenhalgh v Arderne Cinemas Ltd* [1946] All ER 512 (CA). There is also a suggestion that the subdivided shares could be traced back to and identified with the original shares: *In re Financial Corp* (1866–67) LR 2 Ch App 714 (Ch). In addition, in cases concerned with whether a bequest of shares has "adeemed", the question is whether the property exists as substantially the same thing at the death of the testator. (A gift will "adeem" – that is, be extinguished – in circumstances where, for example, there is a change in the nature of the gift between the testator making the will and the testator's death.) In relation to a subdivision of shares, in several cases it has been accepted that the subdivided shares are something that has been changed in name and form only, but that is substantially the same thing as the original shares: *Re Greenberry, Hops v Daniell* (1911) 55 Sol J 633; *In re Faris, Goddard v Overend* [1911] 1 IR 165 (Ch); *In re Clifford, Mallam v McFie* [1912] 1 Ch 29 (Ch); *Guardian Trust and Executors Co of NZ Ltd v Smith* [1923] NZLR 1,284 (SC).

24. Some support for the view that subdivided shares are the same property as the original shares may also be taken from cases on "identity of property". These cases show that where the legal rights acquired are different in nature from those sold, then they could not be considered to be the same property: *McClelland v FCT* (1970) 120 CLR 487; *AL Hamblin Equipment Pty Ltd v FCT* (1974) 74 ATC 4,310 (HCA). However, cases on "identity of property" also suggest that a mere subdivision of land does not change the nature of the legal rights in the property: *Moruben Gardens Pty Ltd v FCT* 72 ATC 4,147. In that case Mason J regarded the sale of all of the subdivided units as constituting a disposition of the entire estate in fee simple. He concluded that there was identity of property before and after the subdivision because the nature of the legal rights in the property remained the same.

Does the Act provide any guidance?

25. Little guidance can be gained directly from the Act. Only one section of the Act deals with subdivisions of shares directly; that is, s EX 68 (this section uses the term "share split"). The wording of this section might suggest that a new interest arises. However, on balance the Commissioner does not think this is the case. The wording of this section reflects the need to ensure the formulae in the foreign investment fund rules work when the number of shares in a foreign investment fund has increased without any new value being introduced to the foreign investment fund.

26. The proposed amendments to the definition of “bonus issue” in the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill, when enacted, will also refer to “subdivisions of shares”. This amendment will clarify that subdivisions of shares are excluded from the dividend rules. The Rulings consider whether s CB 4 applies to subdivisions of shares and the disposal of subdivided shares. This proposed amendment does not affect the reasoning and conclusions in the Rulings.

Conclusion

27. In summary, under the CA 1993, it appears that a subdivision of shares in the circumstances set out in BR Pub 13/01 and BR Pub 13/02 does not involve an issue of new shares or the cancellation of the original shares – the original shares are merely reformatted or reorganised. Overall, the Commissioner considers that, when shares are subdivided, in such cases the shareholder’s rights in the company have not changed, even though the form in which those rights are held has changed. As a result, the Commissioner considers that the subdivided shares are the same property as the original shares for the purposes of s CB 4.

Does s CB 4 apply at the time the shares are subdivided?

28. When a company subdivides shares, the Commissioner considers that at no point does the shareholder give up or lose their share rights as a result of the subdivision. The Commissioner considers that support for this view can be taken from the decision in *Whittome v Whittome (No 1)* (1994) SLT 114 (OH). In *Whittome*, the court considered that a subdivision did not affect the identity of the property held by the shareholders, nor did it affect the proportion of the ownership held by the shareholders. The court considered that the shares were not affected by the subdivision and the shares held following the subdivision were the same property as the shares before the subdivision.

29. Given this, the Commissioner considers that s CB 4 does not apply at the time a person’s shares are subdivided.

Does s CB 4 apply at the time subdivided shares are disposed of?

30. An amount derived by a person on the disposal of subdivided shares, where the original shares were acquired for the purpose of disposal, will be income of the person under s CB 4. Conversely, s CB 4 will not apply to an amount derived by a person on the disposal of subdivided shares where the original shares were not acquired for the purpose of disposal. This is because the shares held by the person after a subdivision can be regarded as the same property as the shares held by the person before the subdivision.

What is the time of acquisition and cost base of subdivided shares held on revenue account?

31. Given that subdivided shares can be regarded as the same property as the original shares, the Commissioner considers that the time of acquisition of the subdivided shares is the time the original shares were acquired.

32. The cost of the original shares may be used to determine the cost base of the subdivided shares on revenue account for purposes of s ED 1.

33. The Commissioner considers that a reasonable method to determine the cost of a subdivided share is to divide the cost of an original share equally between the subdivided shares into which the original share was divided.

Example

34. The following examples are included to help explain the application of the law.

Example 1 – shares acquired for the purpose of disposal

35. On 21 July 2010, Matiu purchased 500 shares in Barry's Bananas Ltd (BBL) for $10 per share. On 10 January 2011, Matiu purchased another 500 shares in BBL for $15 per share. BBL has one class of shares with 100,000 shares on issue. Matiu acquired his 1,000 shares for the purpose of disposing of them at a profit in the future. Therefore, Matiu holds these shares on revenue account.

36. The directors of BBL decide to subdivide all the shares in BBL so that there will be 400,000 shares on issue. The directors pass a resolution stating:

> The Board resolves to subdivide (for nil consideration) each Share in the Company into four Shares of the same type. The subdivision of the Company's Shares will take effect on 1 May 2011.

37. The rights attaching to BBL's shares will continue in existence throughout the subdivision process and will not be altered. Each shareholder's proportionate shareholding in the company will remain the same relative to the other shareholders. In addition, the subdivision will merely represent the reformatting of each shareholder's interest.

38. When the subdivision takes place, BBL's share register is updated with the new numbers of shares. BBL also informs the Companies Office of the subdivision and the new number of shares is recorded on the Companies Register.

39. After the shares are subdivided, Matiu has 4,000 shares. However, Matiu still has the same proportionate interest in the company and the same rights under the shares as he did before the subdivision. In addition, at no point during the subdivision did Matiu not hold shares in BBL. Therefore, s CB 4 will not apply at this time because Matiu has not disposed of anything.

40. On 18 May 2011, Matiu sells his 4,000 shares to Wiremu for $5 per share. Matiu receives $20,000 from Wiremu in return for the shares. At this point, the requirements of s CB 4 have been met; that is, Matiu has derived an amount from the disposal of property that he acquired for the purpose of disposal. As a result, Matiu will have derived an amount of income on the sale of the shares. Matiu does not acquire or dispose of any more shares in BBL in 2011.

41. The cost base of the subdivided shares is the cost of each of the original shares divided equally among the number of subdivided shares into which the original share was split. That is, the cost of each original share is divided equally across four subdivided shares.

42. Matiu acquired 500 shares before the subdivision for $10 per share. After the subdivision those 500 shares became 2,000 shares. As a result, the cost per share of each subdivided share is $2.50.

43. Matiu also acquired a further 500 shares before the subdivision for $15 per share. After the subdivision those 500 shares became 2,000 shares. The cost per share of each subdivided share is $3.75.

44. In the 2011-12 income year, the amount that Matiu derives on the disposal of the shares will be income. In addition, the opening value of the shares (ie, the cost of the shares) will be allowed as a deduction under the matching rules in s ED 1. Using the cost bases identified above, this is calculated in the following way:

- The acquisition cost of the subdivided shares is $5,000 for the first 500 shares acquired, and $7,500 for the second 500 shares acquired. This gives a total acquisition cost for the 4,000 shares of $12,500.
- Matiu sold all 4,000 shares to Wiremu for $20,000.
- The profit of $7,500 that Matiu derived from the sale of the shares will form part of Matiu's net income.

Example 2 – shares not acquired for purpose of disposal

45. On 18 February 2011, Wei purchased 50 shares in BBL. Wei bought the shares as a long-term investment for his family. On 20 March 2011, BBL announces that it will subdivide its shares. After the subdivision, Wei will have 200 shares. Soon after, Wei is diagnosed with a serious illness. He decides to sell some of his shares to help pay for his treatment.

46. BBL subdivides its shares on 1 May 2011. On 2 May 2011, Wei sells 125 of his shares to Gareth. In this situation, s CB 4 will not apply to the amount that Wei derives on the disposal of the 125 shares. This is because, at the time Wei acquired the shares, he did not acquire the shares for the purpose of disposal.

References

Subject references
Cancellation of shares
Disposal
Issue of shares
Personal property
Subdivision of shares

Legislative references
Companies Act 1993, ss 35, 48
Income Tax Act 2007, ss CB 4, ED 1, EX 68

Case references

AL Hamblin Equipment Pty Ltd v FCT (1974) 74 ATC 4,310 (HCA)
Bedford Investments Ltd v CIR [1955] NZLR 987 (SC)
Borland's Trustee v Steel Brothers & Co Ltd [1901] 1 Ch 279 (Ch)
Bradbury v English Sewing Cotton Ltd [1923] AC 744 (HL)
Case L43 (1989) 11 NZTC 1,262 (TRA)
Central Piggery Co Ltd v McNicoll (1949) 78 CLR 594
Clifford, In re, Mallam v McFie [1912] 1 Ch 29 (Ch)
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FCT v St Helens Farm (ACT) Pty Ltd (1981) 146 CLR 336
FCT v Wade (1951) 84 CLR 105
Financial Corp, In re (1866–67) LR 2 Ch App 714 (Ch)
Greenberry, Re, Hops v Daniell (1911) 55 Sol J 633
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Guardian Trust and Executors Co of NZ Ltd v Smith [1923] NZLR 1,284 (SC)
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National Westminster Bank plc v IR Commrs (1994) 12 ACLC 3,215 (HL)
Public Trustee v CIR [1961] NZLR 1,034 (SC)
Robertson v Bicknell (CA129/01, 25 March 2002)
Whittome v Whittome (No 1) (1994) SLT 114 (OH)

Appendix – Legislation

Income Tax Act 2007

1. Section CB 4 provides:

CB 4 Personal property acquired for purpose of disposal

An amount that a person derives from disposing of personal property is income of the person if they acquired the property for the purpose of disposing of it.

2. Section ED 1 relevantly provides:

ED 1 Valuation of excepted financial arrangements

Valuation methods for excepted financial arrangements

(1) A person who has revenue account property that is an excepted financial arrangement must determine the value of the arrangement at the end of each income year at cost.

...

Cost-flow methods

(5) The person must use 1 of the following cost-flow methods to allocate costs:
- (a) the first-in first-out cost method; or
- (b) the weighted average cost method.

...

Persons complying with generally accepted accounting practice

(6) A person who complies with generally accepted accounting practice must comply with the consistency and disclosure requirements of NZIAS 8 or an equivalent standard issued in its place.

Other persons

(7) A person who does not comply with generally accepted accounting practice—
- (a) must be consistent from 1 income year to the next in their choice of 1 of the cost-flow methods described in subsection (5); and
- (b) may change their cost-flow method if—
  - (i) the change is justified by sound commercial reasons and for this purpose, the advancement, deferral, or reduction of an income tax liability is not a sound commercial reason; or
  - (ii) the change is required by another provision in this subpart; and
- (c) must keep sufficient details of any such change, and the reasons for it, under section 22 of the Tax Administration Act 1994.

...

Worthless arrangements

(8) If an excepted financial arrangement has no present or likely future market value and has been written off as worthless, its closing value is zero.

...

Use of value

(9) The value determined under this section is—
- (a) the closing value of the excepted financial arrangement for the purposes of section CH 1 (Adjustment for closing values of trading stock, livestock, and excepted financial arrangements); and
- (b) the opening value of the excepted financial arrangement for the next income year for the purposes of section DB 49 (Adjustment for opening values of trading stock, livestock, and excepted financial arrangements).