

CASE SUMMARY

TRA finds taxpayer undertook land developments himself, omitted to return substantial income and filed returns he knew to be false; “dishonestly, and systematically evaded tax, then attempted to avoid the consequences of his deception.”

Decision date: 29-October-2021

CSUM 21/10

CASE

TRA 009/20 [2021] NZTRA 4

LEGISLATIVE REFERENCES

Income Tax Act 2007, ss CB 1, CB 3, CB 6, DA 1.

Tax Administration Act 1994, ss 6, 6A, 141E, 141FB.

LEGAL TERMS

Onus of proof, unreported income, shortfall penalty for evasion

Summary

The Taxation Review Authority (the “**TRA**”) upheld the Commissioner’s assessments for tax on unreported income and shortfall penalties for evasion.

The TRA concluded that the income from land sales in the disputed transactions was income under s CB 3 of the Income Tax Act 2007 (“**ITA**”) or alternatively income under s CB 1 of the ITA.

The TRA also concluded that the disputant was liable for a shortfall penalty for evasion, finding he dishonestly and systematically evaded tax and attempted to avoid the consequences of his deception.

Impact

This case turned on the facts rather than the law. Is an example of a finding of dishonest and systematic evasion of tax.

Facts

The disputant entered into the purchase and sale of five properties. With one exception (bought and sold as bare land), he arranged the purchase of bare land, construction of a house on the land and sale of the completed house. The disputant claimed he was acting under power of attorney for Chinese nationals, managing the properties and receiving payments for his services arranging the land development and transactions.

However, the disputant personally controlled the property development, sales and acquisitions. The profit was not transferred to China and remained in a New Zealand bank account, with the disputant as the sole signatory. This profit was over and above the management fee the disputant declared in his tax returns over three tax years ending 21 March 2014 to 31 March 2016. The proceeds of the sale of properties were used by the disputant for personal expenses.

Issues

The central factual issue was:

- Whether the disputant was undertaking a property management role and the profit of sales belonged to someone else?

The broad issues for determination were:

- Whether the disputant derived income from carrying out an undertaking or scheme under s CB 3 of the ITA 2007?
- Alternatively, whether the disputant derived income from carrying on a business under s CB 1 of the ITA 2007?
- Whether the disputant deducted costs and expenses from the derived income under s DA 1 ITA 2007?
- Whether the disputant is liable for the evasion shortfall penalty

Decision

Disputant's role in the property transactions

The TRA found that this case was factual in nature, and turned almost entirely on the truth of the disputant's claim he had only a management role and the profits belonged to someone else.

The Commissioner disagreed with the disputant's assertion that he solely acted under power of attorney for others. The Commissioner's investigation included obtaining information from the People's Republic of China under the Double Tax Convection. The registered proprietors stated they had no knowledge or involvement in the properties and did not receive any benefits from them.

The TRA held the disputant's evidence was inconsistency, inconsistent with the written material, inconsistent with the statements of third parties, and implausible. It found that the disputant's use of powers of attorney had no substance behind it.

The TRA concluded that the evidence established the disputant was the true principle for the disputed transaction.

In reaching this conclusion, the TRA considered the following:

- The disputant has a New Zealand education and experience organising construction projects demonstrating his knowledge to follow business process.
- The disputant's claims of naivety and acting on the directions of others against his interests is implausible.
- The Commissioner provided evidence that the disputant had wealth inconsistent with reported income.
- The denial of the people the disputant claimed were the principals, and that there was no evidence provided to show they were treated as such.

Derived Income from the disputant's role in property transactions

The Commissioner quantified the disputant's income derived from the five property transactions, based on the sale prices. This income was presented as assessable under s CB 3 of the ITA or, alternatively, CB 1 of the ITA.

The TRA held that due to the factual findings there can be no sensible argument that the derived income provisions do not apply. In agreement with the Commissioner's assessment, the TRA found that either section could apply. There was no contention on this matter from the Disputant.

Deducted costs and expenses from the derived income

The TRA held that given the conclusion that the disputant derived income, the amount of taxable profit requires deduction of costs and expenses of deriving income.

The TRA concluded, that despite some contention when quantifying the deductions there was no basis to reject the Commissioner's quantification in whole or in part.

Liability for the shortfall penalty

The TRA held that the findings make it inevitable that the disputant was liable for a shortfall penalty for evasion pursuant to s 141E of the Tax Administration Act 1994. The disputant understood his obligations but created a fictitious set of records where he pretended to be an agent acting under powers of attorney. The disputant was aware that the people he selected were not in New Zealand and were not liable for tax.

The TRA concluded that the disputant dishonestly, and systematically evaded tax then attempted to avoid the consequences of his deception.

About this document

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