[BR Prd 12/05 has been withdrawn and replaced by BR 14/05]

PRODUCT RULING - BR Prd 12/05

This is a product ruling made under s 91F of the Tax Administration Act 1994.

Name of the Person who applied for the Ruling

This Ruling has been applied for by ProCare Health Limited (PHL).

Taxation Laws

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

This Ruling applies in respect of ss BG 1, CB 4, CD 1 and CD 8.

The Arrangement to which this Ruling applies

The Arrangement is the issue by PHL of two tranches of new shares to its existing shareholders and a further two tranches to the ProCare Charitable Foundation (the Trust), and the redemption of one of the tranches issued to existing shareholders.

Further details of the Arrangement are set out in the paragraphs below.

The parties to the Arrangement

1. PHL was incorporated in New Zealand in 1995 and provides management and clinical services to its subsidiaries. One of PHL's subsidiaries is a Primary Health Organisation, which is contracted by the Auckland District Health Board to provide primary healthcare services to patients in the Auckland, Counties Manukau and Waitemata District Health Board domiciles. PHL also has two commercial subsidiaries that provide medical services.

2. PHL currently has 389 shareholders, each of whom are general practitioners (GPs) contracted to PHL. It is currently not mandatory for contracted GPs to hold a share in PHL, and there are approximately 400 GPs currently contracted to PHL who are not shareholders.

3. The Trust will be newly established with PHL as the Settlor. Under clause 2.3 of the draft Procare Charitable Foundation Trust Deed, the Trust has the purpose of promoting the health and wellbeing of disadvantaged communities across the Greater Auckland Region and, to that end, the Trust is authorised to provide grants and funding and develop programmes. The Trust will seek registration as a charitable entity under the Charities Act 2005.

Background to the Arrangement

4. It is proposed that PHL will introduce a mandatory shareholding requirement for contracted GPs. It is hoped that the introduction of mandatory shareholding will increase the engagement of contracted GPs with the organisation, and that it will provide all contracted GPs with the ability to participate in PHL's governance.

5. Following the introduction of mandatory shareholding, PHL will need to issue new ordinary shares to contracted GPs who are not currently shareholders. Before issuing these new shares, PHL will undergo a capital restructure, return value to its existing shareholders, and establish the Trust. PHL has over 90% shareholder approval for the proposed restructure.

Steps involved in the Arrangement

6. The steps involved in the Arrangement are:

   (a) The issue by PHL to all existing shareholders of two tranches of non-voting redeemable preference shares (RPS), being:

      (i) a fully imputed taxable bonus issue, as defined in s YA 1, subparagraph (b) (Tranche 1); and

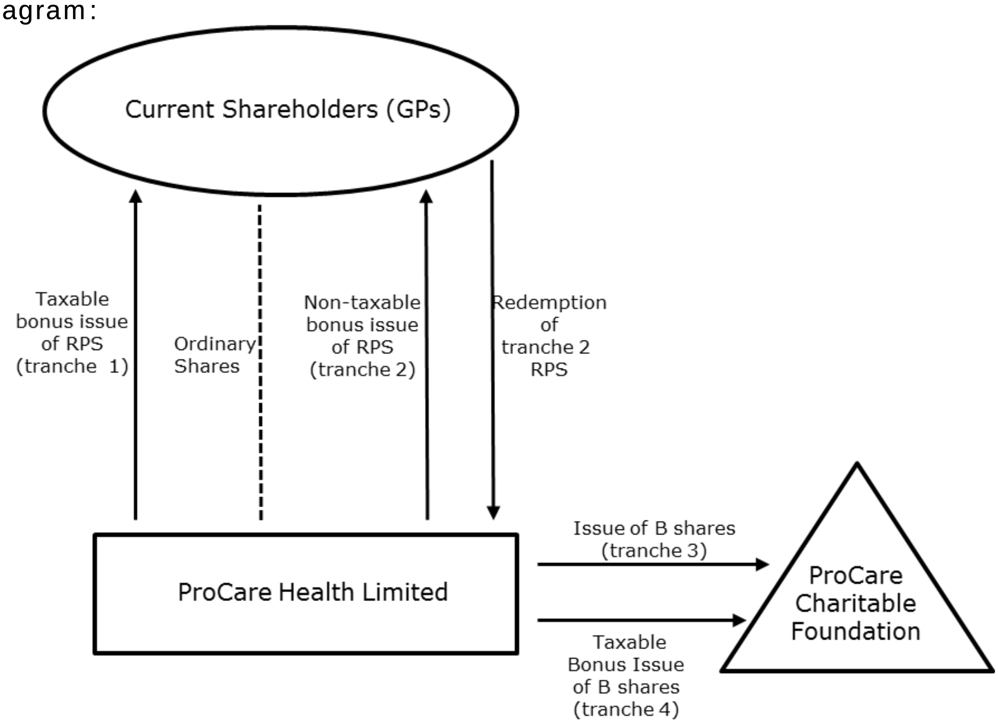
      (ii) a non-taxable bonus issue as defined in s YA 1 (Tranche 2).

   (b) The redemption and cancellation off market by PHL of the Tranche 2 shares at face value (in aggregate, approximately $2.5 million).

   (c) The issue by PHL of a small number of non-voting B shares to the Trust (Tranche 3).

   (d) The fully imputed taxable bonus issue, as defined in s YA 1, subparagraph (b), by PHL of non-voting B shares to the Trust (Tranche 4).

7. The steps involved in the Arrangement are summarised in the following diagram:



Further details of the Arrangement

8. In issuing and redeeming the shares, PHL will be acting pursuant to the Constitution of PHL. Clause 2.1 of the Constitution provides:

> **Shares on adoption:** Upon or following adoption of this constitution, the Company will have the following classes of share on issue:
>
> a. Ordinary Shares;
>
> b. Redeemable preference Shares; and
>
> c. B Shares.

9. Pursuant to clause 2.1 of the Constitution, PHL may issue different classes of shares, including shares that:

> a. Are redeemable within the meaning of section 68 of the Act;
>
> b. Confer preferential rights to receive distributions of capital or income;
>
> c. Confer special, limited or condition voting rights; or
>
> d. Do not confer voting rights.

10. Clause 2.5 of the Constitution provides:

> **Redemption of Shares**: The Company may exercise an option to redeem redeemable Shares issued by the Company in relation to one or more holders of redeemable Shares.

11. The Tranche 1 shares will be non-voting and will not carry any "shareholder decision-making rights" (as defined in s YA 1). The Tranche 1 shares will pay dividends of approximately 7.5% per annum. PHL will elect to treat the Tranche 1 shares as a dividend pursuant to s CD 8(2). PHL does not intend to redeem the Tranche 1 shares in the foreseeable future.

12. The Tranche 2 will be non-voting and do not carry any "shareholder decision-making rights" (as defined in s YA 1). The Tranche 2 shares will have a face value approximate to that of the Tranche 1 shares. The Tranche 1 and Tranche 2 shares will be issued on near identical terms, but PHL will elect to treat them as shares of different classes. PHL will not elect to treat the Tranche 2 shares as a dividend.

13. As noted already PHL will redeem and cancel the Tranche 2 shares. The amount paid by PHL for the redemption and cancellation will exceed the available subscribed capital of class (ASC) under the ordering rule.

14. The Tranche 3 shares and Tranche 4 shares issued to the Trust will be B shares. These shares will be non-voting and will not carry any "shareholder decision-making rights" (as defined in s YA 1). The B shares will not be able to be traded, and are expected to pay dividends in the future. The total value of the B shares is expected to be approximately $2.5 million. PHL will elect to treat the Tranche 4 shares as a dividend pursuant to s CD 8(2).

15. Following the steps outlined in paragraph 6 above, the contracted GPs who are not currently shareholders of PHL will be required to subscribe for an ordinary share (the subscription amount is expected to be approximately $500 per share).

16. At the time the Tranche 3 shares are issued, the Trustees of the Trust will not be shareholders of PHL or associated with shareholders of PHL. PHL will issue these shares only in order to benefit the Trust and to enable it to carry out its charitable activities.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

a) The Tranche 1 shares will be a dividend and consequently income of the shareholders under s CD 1.

b) The Tranche 2 shares will not be a dividend and consequently will not be income of the shareholders under s CD 1.

c) The payment PHL makes to the shareholders for the redemption and cancellation of the Tranche 2 shares will be a dividend and consequently income of the shareholders under s CD 1.

d) If any shareholder is treated under s CB 4 as having derived income as a result of the payment PHL makes to him or her for the redemption and cancellation of the Tranche 2 shares, the income of the shareholder under s CB 4 will be zero as a result of s CD 53(2).

e) Section BG 1 does not apply to the Arrangement.

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 1 October 2012 and ending on 1 October 2015.

This Ruling is signed by me on the 1st day of October 2012.

Howard Davis
Director (Taxpayer Rulings)