

PRODUCT RULING - BR Prd 14/05

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 ProCare Health Limited (PHL) PHL of two tranches of new shares to its existing shareholders on 15 October 2012, and the redemption of one of the tranches issued to existing shareholders. A further two tranches of shares may also be issued by PHL, to the ProCare Charitable Foundation (the Trust).

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 regional Health Boards 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 had 389 shareholders as of 15 October 2012 (as at 15 November 2013, it had 379 shareholders), each being a general practitioner (GP) contracted to PHL. It is currently not mandatory for contracted GPs to hold a share in PHL, and as at the date of this ruling there are approximately 400 GPs currently contracted to PHL who are not shareholders.
3. The Trust was established on 17 July 2012 with PHL as the Settlor. Under the Procure 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 is registered as a charitable entity under the Charities Act 2005.

Background to the Arrangement

4. It is currently 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

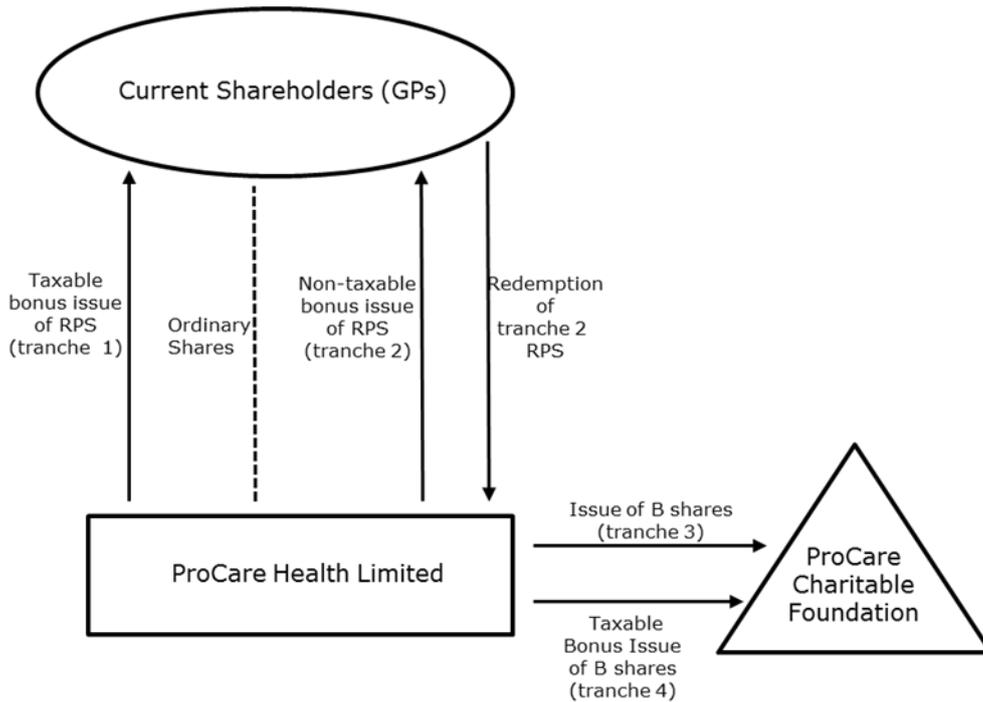
ability to participate in PHL's governance. Other means by which PHL might increase the participation of contracted GPs and operate more effectively to promote the health and wellbeing of people within the Greater Auckland Region are also being considered.

5. In the event that mandatory shareholding is introduced, PHL will need to issue new ordinary shares to contracted GPs who are not currently shareholders. In anticipation of the introduction of mandatory shareholding, PHL has undergone a capital restructure to return value to its existing shareholders, and has established the Trust. PHL has obtained 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 on 15 October 2012 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).
7. It is anticipated that the Arrangement will incorporate the following additional steps:
 - (a) The issue by PHL of a small number of non-voting B shares to the Trust (Tranche 3).
 - (b) 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).

8. The steps involved in the overall Arrangement (including the issue of the Tranche 3 and Tranche 4 shares) are summarised in the following diagram:



Further details of the Arrangement

9. In issuing and redeeming the shares, PHL has, and 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.

10. 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.

11. 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.

12. The Tranche 1 shares are non-voting and do 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 has elected 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.

13. The Tranche 2 shares are non-voting and do not carry any "shareholder decision-making rights" (as defined in s YA 1). The Tranche 2 shares have a face value approximate to that of the Tranche 1 shares. The Tranche 1 and Tranche 2 shares have been issued on near identical terms, but PHL has elected to treat them as shares of different classes. PHL has not, and will not, elect to treat the Tranche 2 shares as a dividend.
14. PHL has redeemed and cancelled the Tranche 2 shares. The amount paid by PHL for the redemption and cancellation exceeded the available subscribed capital of the class under the ordering rule.
15. The Tranche 3 shares and Tranche 4 shares, if 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 will be expected to pay dividends in the future. The total value of such B shares is expected to be approximately \$2.5 million. If the Tranche 3 and Tranche 4 shares are issued, PHL will elect to treat the Tranche 4 shares as a dividend pursuant to s CD 8(2).
16. If the Tranche 3 shares are issued then at the time the Tranche 3 shares are issued, the Trustees of the Trust will not be shareholders of PHL or associated with the 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.
17. Following the steps outlined in paragraphs 6 and (if implemented) 7 above, it is anticipated that PHL will undertake further changes to its operating and business ownership structure and PHL currently proposes that contracted GPs who are not existing shareholders of PHL will be required to subscribe for an ordinary share (with the subscription amount expected to be approximately \$500 per share). These further changes are not part of the Arrangement (and this ruling does not apply to these further changes).

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- a) The Tranche 1 shares are a dividend and consequently income of the shareholders under s CD 1.
- b) The Tranche 2 shares are not 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 was 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 20th day of June 2014.

Dinesh Gupta

Manager (Taxpayer Rulings)